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No. 178.

In the Supreme Court of the United States

OCTOBER TERM, 1927.

GULF FISHERIES COMPANY, APPELLANT,

vs.

JOHN L. DARROUZET, DISTRICT AND COUNTY ATTORNEY OF GALVESTON COUNTY, TEXAS; D. B. MacINERNEY, SUBSTITUTED BY AGREEMENT, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS.

BRIEF FOR THE APPELLEE.

Statement of the Case.

This suit was instituted June 18, 1926, by the Gulf Fisheries Company, a corporation, by the filing in the United States District Court for the Southern District of Texas, Galveston Division, of a bill in equity complaining of John L. Darrouzet, the county and district attorney of Galveston County, Texas; and alleging that the defendant in his official capacity was threatening to sue the complainant, its officers and employees, because of the failure and refusal of the Gulf Fisheries Company to comply with a statute of the State of Texas which required it as a wholesale dealer in fish to take out a license and to pay one dollar for each one thousand pounds of fish handled by the Company. The bill prayed for an injunction to restrain the defendant from causing the arrest of plaintiff, its officers, agents and employees, or from taking any other action against plaintiff because of its failure and refusal to pay the said tax. (R. 1-5.)

By reason of change in office the name of D. B. MacInerney, as county and district attorney of Galveston County, Texas, was substituted for John L. Darrouzet, the original defendant. (R. 5.)

The defendant filed a motion to dismiss and an answer denying that the act complained of was in conflict with the Constitution or laws of the United States. (R. 6-9.)

The cause was tried at New Orleans on October 29, 1926, before a three-judge court on an agreed statement of facts and the injunction was refused. (R. 17.)

From the agreed statement of facts it appears that the appellant, Gulf Fisheries Company, is a corporation, chartered by the State of New York, but its office and only place of business is located in Galveston, Texas, where it receives and fills all orders. (R. 14.)

That appellant handles fish in wholesale quantities, and has a wholesale fish dealer's license, but refuses to pay the special tax of one dollar for each one thousand pounds of fish handled by it. (R. 12.)

That at the time of filing the bill for an injunction, the appellant was handling fish caught outside of Texas, some from the open seas and some from off the coast of Mexico. (R. 1-10.)

The fish were caught by fishermen under the following circumstances: Appellant owned a number of boats equipped for fishing. The boats were delivered to fishermen who fished on shares. Of the total catch, forty (40) per cent was delivered to the appellant for the use of the ship; then after paying for towing, oil and fuel, and for the groceries, ice and other supplies furnished for the trip, the balance of the catch was distributed as follows:

If there are nine men the balance is divided into ten (10) shares. The captain gets one and one-half shares. The first hand gets one and one-quarter shares, the cook gets one and one-quarter shares, unless otherwise determined by the crew, leaving one share for each of the other fishermen.

As soon as the fishermen bring their catch into Galveston, the fish are unloaded and weighed, the value of the fish is then and there determined and the fishermen paid for their shares as above outlined. (R. 10-11.)

The appellant then has the fish unloaded into large bins and ice boxes at its place of business. All the fish are weighed and washed and approximately seventy-five per cent are beheaded and gutted, and from seven to ten per cent are gutted and gilled with heads left on. On filling orders the fish are packed in barrels with ice. The remainder—between fifteen and twenty per cent—are sold within the city of Galveston to wholesale dealers. (R. 11.)

It was agreed that about twenty-five per cent of the fish shipped by appellant as above described went to States outside of Texas, and that appellant sells its fish in competition with other companies, both in Texas and out, and that the tax is greater in some States than the Texas tax, and less in other States. (R. 14.)

The contention of the plaintiff in bringing the suit was that the statute of Texas compelling it to pay one dollar on each thousand pounds of fish handled was void under Article I, Section 10, of the Constitution of the United States.

The opinion of the court below written by Judge Hutcheson, reported in 17 F. (2d) 374, and found on pages 18 to 22 of the Record, shows the three questions presented for determination. Since they are the same the appellant in this court seeks to negative we quote from the opinion:

> "1. That fish are not imports, because fish being ferae naturae are not the subject of private property, and therefore are not within the inhibitions of the invoked provision of the Constitution. (R. 20.)
>
> "2. That if the fish are in their nature imports, in this particular case they have become so mingled with the common mass of property in the State as to lose their character as such and therefore their exemption. (R. 21.)
>
> "3. That conceding them to be imports, the tax is levied and is necessary for inspection purposes to protect the fish and game, and therefore is levied under direct authority of the Constitution." (R. 21.)

The court was of the opinion that the fish were imports, but found it unnecessary to answer the second question, because it had "no hesitation in finding that the tax is properly laid as an inspection

tax, that it is therefore strictly within the constitutional provision and that the injunction should be denied." (R. 22.)

We will divide our argument into the three subdivisions made by appellant, restating the propositions in the light of the contentions of appellee.

First Counter Proposition.

Fish caught in the open sea, and in the waters off the coast of Mexico by American fishermen on an American vessel, are not imports within the meaning of Article I, Section 10, of the Constitution when brought into a port in the United States.

It is not to be presumed that a State law is violative of the Constitution of the United States, and as we read the cases, the burden is on the appellant to clearly establish the unavoidable conflict before his proposition can be entertained.

If fish caught in the waters of the open sea or in waters adjacent to foreign territory by fishermen on an American vessel are "imports" within the meaning of Article I, Section 10, of the Constitution, the appellant has failed to cite any case so holding. Brown vs. Maryland, 12 Wheat. 419, 6 L. Ed. 678, and Woodruff vs. Parham, 8 Wall. 123, 19 L. Ed. 382, are the only cases referred to by appellant in this connection. The first dealt with an importer who had been indicted for selling a package of dry goods brought in from a foreign country without having paid the license tax levied by the State on "importers." The other called in question a tax levied by the city of Mobile on auction sales. The goods sold by Woodruff were the products of other States and were sold in the original and unbroken packages. This court held such goods were not imports and that the Constitution did not prohibit the levy of such a tax on such goods. In referring to duties and imposts as used in the Constitution, the court said:

> "In the ordinary use of these terms at this day, no one would, for a moment, think of them as having relation to any other articles than those brought from a country foreign to the United States, and at the time the case of Brown vs. Maryland

was decided—namely, in 1827—it is reasonable to suppose that the general usage was the same, and that in defining imports as articles brought into the country, the Chief Justice used the word 'country' as a synonym for United States." (P. 132.)

It is to be noted in the above quotation that the duties and imposts which the States are prohibited from levying refer to charges placed on goods brought into the United States from foreign countries; the fish in this case were not shipped from any foreign country as "exports" nor brought into the United States as "imports." They were caught in the sea by fishermen on an American vessel.

The peculiar nature of the control possessed by a State over fish and shellfish in its waters and those brought into its jurisdiction must be kept in mind.

In the case of McCready vs. Virginia, 94 U. S. 391, 24 L. Ed. 248, this court in an opinion by Chief Justice Waite said:

"The principle has long been settled in this court that each State owns the beds of all tide waters within its jurisdiction, unless they have been granted away. * * * In like manner, the States own the tide waters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its people, and the ownership is that of the people in their united sovereignty. Martin vs. Waddel, 16 Pet. 410. The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the State, which has consequently the right, in its discretion, to appropriate its tide waters and their beds to be used by its people as a common for taking and cultivating fish, so far as it may be done without obstructing navigation. Such an appropriation is in effect nothing more than a regulation of the use by the people of their common property. The right which the people of the State thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a property right, and not a mere privilege or immunity of citizenship." (Pp. 394-5.)

It was consequently held that citizens of other States could be excluded from such waters.

In the case of Manchester vs. Massachusetts, 139 U. S. 240, 35 L. Ed. 159, 11 Sup. Ct. 559, this court held that the States have entire control over their fisheries, whether the fish be migratory, free-swimming fish, or free-moving fish, or fish attached to or embedded in the soil. That control extended over that portion of the seas within the jurisdiction of the State, so that a vessel, licensed to fish for menhaden under the laws of the United States, was bound to comply with the laws of Massachusetts limiting and restricting the right to fish for menhaden in the waters within the jurisdiction of that State.

To the same effect are Smith vs. Maryland, 18 Howard 71, 15 L. Ed. 269, and Lee vs. New Jersey, 207 U. S. 67, 52 L. Ed. 106, 28 Sup. Ct. 22.

In Silz vs. Hesterberg, 211 U. S. 31, 53 L. Ed. 75, 29 Sup. Ct. 10, this court in an opinion by Mr. Justice Day held that a State could make the possession of game shipped from Russia a criminal offense even where the game was in the hands of the importer and possession was legal at the time the game came into his hands. The court said:

> "In order to protect local game during the closed season it has been found expedient to make possession of all such game during that time, whether taken within or without the State, a misdemeanor. In other States of the Union such laws have been deemed essential and have been sustained by the courts.
>
> "It has been provided that the possession of certain kinds of game during the closed season shall be prohibited, owing to the possibility that dealers in game may sell birds of the domestic kind under the claim that they were taken in another State or country. The object of such laws is not to affect the legality of the taking of game in other States, but to protect the local game in the interest of the food supply of the people of the State. We cannot say that such purpose, frequently recognized and acted upon, is an abuse of the police power of the State, and as such to be declared void because contrary to the Fourteenth Amendment to the Constitution."

In Kennedy vs. Becker, Sheriff, 241 U. S. 556, 60 L. Ed. 1166,

36 Sup. Ct. 705, the court in an opinion by Chief Justice White held the power of the State of New York to pass laws relating to the preservation of fish and game within its borders takes precedence over the reservation to the Seneca Indians of certain fishing and hunting privileges in the Big Tree Treaty of 1797 notwithstanding the fact that the Indians were the wards of the United States.

In Lacoste vs. Department of Conservation, 263 U. S. 545, 68 L. Ed. 437, 44 Sup. Ct. 186, the court in an opinion by Mr. Justice Butler, sustained a tax of Louisiana on all skins and hides of wild animals taken in the State, although in the hands of dealers to be shipped out of the State. The court said:

> "Protection of the wild life of the State is peculiarly within the police power, and the State has great latitude in determining what means are appropriate for its protection."

In Geer vs. Connecticut, 161 U. S. 519, 40 L. Ed. 793, 16 Sup. Ct. 600, this court considered a statute of Connecticut prohibiting anyone from shipping or transporting out of the State game lawfully taken or possessed in the State. The court in an opinion by Mr. Justice (later Chief Justice) White, held the statute valid, and, among other things, said that game is property of such a nature that it cannot become an object of commerce except with the consent of the State and subject to such conditions as the State may impose.

The decisions of the State courts are to the same effect. See People vs. O'Neil, 110 Mich. 324, 68 N. W. 227; Ex parte Fritz, 86 Miss. 210, 38 So. 722; Durham vs. Lamphere, 69 Mass. 268; Commonwealth vs. Gilbert, 160 Mass. 157, 35 N. E. 454; State vs. Kofines, 33 R. I. 211, 80 Atl. 432; State vs. Hanlon, 77 Ohio St. 19, 83 N. E. 662; State vs. Schuman, 36 Ore. 16, 58 Pac. 661.

In Commonwealth vs. Young, 165 Mass. 396, 43 N. E. 118, the Supreme Judicial Court of Massachusetts in an opinion by Justice Allen, held that the State statute prohibiting the possession of certain sea food applied to lobsters shipped in from Nova Scotia to the defendant and by him merely repacked for shipment to New York.

In People vs. Lassen, 142 Mich. 597, 106 N. W. 143, the Supreme Court of Michigan in an opinion by Chief Justice Moore held that

the State statute declaring it unlawful to market or have in possession certain fish was valid and enforceable even when applied to fish lawfully caught in Canadian waters and brought into Michigan only for shipment to Boston, Massachusetts.

In State vs. Craig, 80 Me. 85, 13 Atl. 129, the Supreme Court of Maine held that laws passed to protect the lobster industry of the State would apply to one bringing in lobsters caught in the open sea outside the jurisdiction of Maine. And see People vs. A. Booth & Co., 105 App. Div. 184, 93 N. Y. Supp. 425, wherein the New York closed season on fish was applied to those brought in from Canada.

In the case of State vs. Hume, 52 Ore. 1, 95 Pac. 808, the Supreme Court of Oregon sustained a statute levying a tax on canners of salmon. In the opinion by Judge Moore, the court says:

> "It is a generally recognized principle that migratory fish in the navigable waters of a State, like game within its borders, are classed as animals ferae naturae, the title of which, so far as that claim is capable of being asserted before possession is obtained, is held by the State, in its sovereign capacity in trust for all its citizens, and as an incident of the assumed ownership, the legislative assembly may enact such laws as tend to protect the species from injury by human means and from extinction by exhaustive methods of capture.
>
> "The taking of salmon by any means could be prohibited for a reasonable time, at least, in order to permit the number of such fish to be augmented by a propagation of the species, or *the State might lawfully demand such a sum of money for the privilege of pursuing any branch of the business as would be equivalent to prohibition.*" (Italics ours.)

From the authorities we believe it is clear that a State has power to protect the fish and game of the State, if necessary, to the extent of excluding entirely fish or game from without the State, and may impose such uniform conditions on those engaged in the fish business within the jurisdiction of the State as the Legislature may deem proper.

In the light of the cases, both Federal and State, it would be difficult to maintain that fish are ordinary objects of commerce, subject to the ordinary rules governing the purchase, sale and shipment

of goods, wares and merchandise. If so, it would be hard to understand how such objects of commerce coming from other States and nations can be excluded, how those within the State may be denied export, and how persons who obtained possession lawfully may be prosecuted criminally for transporting or offering to sell the same against the will of a given State as evidenced by the statutes.

We conclude, therefore, that fish caught in the open sea, and in the waters off the coast of Mexico by American fishermen on an American vessel, are not imports within the meaning of Article I, Section 10, of the Constitution when brought into a port in the United States.

The appellant relies almost solely on the case of Brown vs. Maryland, supra, and the doctrine therein announced that a State cannot tax merchandise imported from a foreign country. The reasoning upon which that conclusion is based is that sale is the object of importation and is an essential ingredient, and when an importer pays the Federal government a duty upon the merchandise, he has thereby purchased the right to sell it in the original package, and a State cannot forbid the sale or place additional taxes thereon prior to the sale.

The reasoning has no application here. The fish are not merchandise imported from any foreign country, no duty has been paid to the Federal government, and none is required. See Tariff Act of 1922, paragraph 1630, where all fish and other products of American fisheries are listed as duty free.

Since Congress has revisory control over State laws imposing duties and imposts on imports and exports, even for inspection purposes (a subject we discuss under our third counter proposition) the construction placed by the Federal government on the subject will doubtless be very persuasive.

Fortunately, the matter has been fully considered and the expression covers every phase of the case now before the court. For the information of the court, we quote from the United States Customs Regulations of 1923:

"Art. 449. *Character of Products—American Fishers Defined.*—Fish or other marine products taken in American waters

or on the high seas by an American vessel and brought into port by the vessel taking the same are not imported from a foreign port, and no entry therefor is required. Under paragraph 1630 of the tariff act spermaceti and other fish oils of American fisheries and all fish and other products of such fisheries are entitled to entry free of duty.

"American fishery within the meaning of said paragraph is defined as a fishery operated under the American flag by American vessels in foreign waters, in which such vessels have the right, by treaty or otherwise, to take fish and other marine products.

"The employment of foreign fishermen either as members of the crew or under the supervision of the master or crew of an American vessel is allowed. The purchase by the owner, agent, master, or crew of an American vessel of fish or other marine products taken by the citizens of another country in foreign waters will subject such fish or other marine products to treatment as foreign merchandise.

"Products of American fisheries when landed at a foreign port and there frozen, dried, or otherwise treated, purchased by foreigners and shipped to the United States for their account, would not be entitled to free entry, except as provided in T. D. 10059. The products of such fisheries may include fish, oil, bone, sponges, turtles, and all other marine products."

The position taken by the appellee, it appears, is identical with that of the Federal government. Fish caught in the open sea and in foreign waters by fishermen on an American vessel are not imports. As said by the United States Circuit Court of Oregon, in the case of In re Deininger, 108 Fed. 624:

> "When game is brought from another State, by whatever means, or for whatever purpose, or in whatever condition, it becomes, upon the moment of its introduction unto the State, a part of the game of the State, and subject to the control of its laws."

Second Counter Proposition.

If fish caught in the open sea, and in the waters off the coast of Mexico by fishermen on an American vessel could be termed imports within the meaning of Article I, Section

10, of the Constitution, when brought into a port in the United States, still in the present case the fish in the bins of the appellant in Galveston have been so acted upon that they have lost their character of imports and have become mingled with the common mass of property in the State, and hence subject to State taxation.

The position of the appellant as shown by its second point, is that the fish have not been so acted upon as to become a part of the common mass of property in the State.

The facts pertinent to this question show that the fish were caught by fishermen using the boats owned by the appellant. The fishermen fished on shares. Of the total catch forty per cent were delivered to the appellant for the use of the ship; then after paying for towing, oil and fuel and for the groceries, ice and other supplies furnished for the ship, the balance of the catch were distributed as follows: If there were nine men, the balance was divided into ten shares. The captain got one and one-half shares, the first hand one and one-quarter shares, the cook one and one-quarter shares, and the other fishermen one share each, unless some other division was agreed upon.

As soon as the fishermen brought their catch into Galveston, the fish were unloaded and weighed, the value of the fish were then determined and the fishermen were paid for their shares upon the basis which they had agreed to as above outlined. (R. 10-11.)

The appellant had its only office and storage facilities on the water front at Galveston. There it had several large bins and ice boxes for the storage and handling and re-icing of the fish. After the fish were unloaded by the appellant from the vessels in Galveston they were weighed and washed. Approximately seventy-five per cent of the fish were beheaded and gutted, and from seven to ten per cent were gutted and gilled with heads left on, and the remainder were sold without beheading or removing gills or entrails; said fish were re-iced and when shipped out to fill orders were packed in barrels with ice. All of the fish were handled in this way except fifteen or twenty per cent, which were sold locally to wholesale dealers in the city of Galveston. (R. 11.)

The appellant has taken out a wholesale fish dealer's license from the Game, Fish and Oyster Commissioner of Texas, but refused to pay the tax of one dollar per thousand pounds of fish levied by the Texas statute. (R. 12.)

Plaintiff has no other place of business than the one at which it transacts its business at Galveston, Texas, and all fish are sold on orders received by the plaintiff at its office in Galveston, Texas. About nine hundred thousand pounds of fish having a value of about seventy-two thousand ($72,000.00) dollars are handled by appellant each year. (R. 14.)

This whole controversy turns on the tax of one dollar on each one thousand pounds of fish levied by Article 936 of the Texas Penal Code of 1925. The charge is levied on each one thousand pounds of fish, shrimp and crabs handled by a wholesale fish dealer. The appellant admits that it is a wholesale fish dealer and has taken out the license required by the laws of Texas. It certainly, then, is in no position before this court on an injunction suit to complain of the statute of Texas in so far as the wholesale fish dealer's license is concerned.

The particular question now being considered is whether or not the fish have been so acted on that they may be taxed in the hands of a wholesale fish dealer in the city of Galveston assuming for the sake of the argument under this counter proposition that the inspection feature of the tax (which will be discussed later) is not involved.

Appellant quotes at great length from the case of Brown vs. Maryland, supra, and from the opinion of Chief Justice Taney, in the License Cases, 5 Howard 504, 12 L. Ed. 256. The doctrine announced is that goods imported from a foreign country, while they remain in the hands of the importer, in the form and shape in which they are brought into this country cannot be taxed by a State. Counsel concedes that when the original package has been broken up for use or for retail by the importer, and also when the commodity has passed from his hands into those of a purchaser that it ceases to be an import and becomes subject to all the laws of the State and may be taxed as any other property found in the State. We contend for

no more in this case. The cases we cite merely serve to define the terms, and to show that the fish in this case have been changed from their original condition and have passed into the hands of a purchaser.

In the case of May vs. New Orleans, 178 U. S. 496, 44 L. Ed. 1165, 20 Sup. Ct. 976, this court in an opinion by Mr. Justice Harlan, said:

> "Undoubtedly the payment of duties imposed by the United States on imports gives the importer the right to bring his goods into this country for sale, but he does not simply by paying the duties escape taxation upon such goods as property after they have reached their destination for use or trade, and the box, case or bale containing them has been opened and the goods exposed for sale. (P. 504.)
>
> "In our judgment, the original package in the present case was the box or case in which the goods imported were shipped, and when the box or case was opened for the sale or delivery of the separate parcels contained in it, each parcel of the goods lost its distinctive character as an import, and became property subject to taxation by the State as other like property situated within its limits. The tax here in question was not in any sense a tax on imports nor a tax for the privilege of bringing the things imported into the State. It was not a tax on the plaintiff's goods because they were imported from another country, but because at the time of the assessment they were in the market for sale in separate parcels and therefore subject to be taxed as like property, in the same condition, that had its origin in this country." (P. 508.)

The doctrine of the "original package" seems to be somewhat involved, but we believe the cases will bear out the statement that if articles imported from a foreign country are changed from the original form or broken up from the original package or broken up from the mass and held for indiscriminate sale or if passed into the hands of someone besides the importer that the immunity which attaches to the import is lost. Austin vs. Tennessee, 179 U. S. 343, 45 L. Ed. 224, 21 Sup. Ct. 132; American Steel & Wire Company vs. Speed, 192 U. S. 500, 48 L. Ed. 538, 24 Sup. Ct. 365; Cook vs. Marshall County, 196 U. S. 261, 49 L. Ed. 471, 25 Sup. Ct. 233; Askren vs. Continental Oil Company, 252 U. S. 444, 64 L. Ed. 654, 40 Sup. Ct. 355; Bowman vs. Continental Oil Company, 256 U. S. 642, 65

L. Ed. 1139, 41 Sup. Ct. 606; Sonneborn Bros. vs. Cureton, 262 U. S. 506, 67 L. Ed. 1095, 43 Sup. Ct. 643.

In the case of H. P. Hood & Son vs. Commonwealth, 235 Massachusetts 572, 127 N. E. 497, the Supreme Judicial Court of Massachusetts in an opinion by Chief Justice Rugg held that milk shipped into Boston from various States outside of Massachusetts and pasteurized in Boston prior to its sale, had been so acted upon so as to become a part of the common mass of the property in the State and subject to State taxation.

In the case of Standard Oil Company vs. Combs, 96 Indiana, 179, the Supreme Court of Indiana in an opinion by Chief Justice Elliott, held that a large quantity of barrel staves stopped in transit in Indiana on its way from other States to Pittsburg, Pennsylvania, to receive a process called "buckling" was subject to State taxation. The court said:

> "The property of the appellant was of a tangible nature and was in this State for the purpose of undergoing, while here, a partial finishing process and it cannot be regarded as having been in the course of transit, nor as here for a mere temporary purpose. Property within the State, for the purpose of undergoing any part of the process of manufacture is here for more than a temporary purpose connected with its transportation. The situs of the property does not depend upon the extent of the work that is to be done upon it, for, if it is here to be put through any of the stages in the process of manufacture, it is here for a purpose which legitimately subjects it to taxation. It cannot be justly asserted that property within the State for the purpose of undergoing a part of the process of manufacture is here for a mere temporary purpose, or for the purpose of transportation." (Pp. 180-1.)

Appellant on page 20 of its printed brief refers to the case of City of Galveston vs. Mexican Petroleum Corporation, 15 Fed. (2d) 208, wherein Judge Hutcheson held that oil shipped from Mexico in tankers had not lost its original character merely by being pumped into large receiving tanks at the wharf. He held that the ship was not the original package. On page 208 of that opinion he stated that the oil pumped into the tanks would lose its state as an import if

maintained in the tanks for the purpose of general and indiscriminate sale. Can it be doubted what the holding would be in such a case where the oil had been processed in this country for sale?

That is the status of the fish in the present case, even if they were property of such character as to be imports within the meaning of the constitutional provision.

Where a tax or license fee is not directed against an import, but is uniform on all property in the State of like kind that is similarly situated it is a valid exercise of the power of the State even though some of the property originally came from the other States or foreign countries. Tiernan vs. Rinker, 102 U. S. 123, 26 L. Ed. 103; Emert vs. Missouri, 156 U. S. 296, 39 L. Ed. 430, 15 Sup. Ct. 367; and license fees may be imposed on brokers whose sole business is negotiating interstate sales, Ficklen vs. Shelby County, 145 U. S. 1, 36 L. Ed. 601, 12 Sup. Ct. 810; and an occupation tax may be imposed by a State on brokers who deal in foreign exchange exclusively, Nathan vs. Louisiana, 8 Howard 73, 12 L. Ed. 992.

One following an ordinary occupation locally may be compelled to pay an occupation tax even though he deals in goods shipped in from without the State. State vs. French, 109 N. C. 722, 14 S. E. 383; Spaulding vs. Adams County, 79 Wash. 193, 140 Pac. 367; Armour Packing Co. vs. Lacy, 200 U. S. 226, 50 L. Ed. 451, 26 Sup. Ct. 232.

The State courts have held specifically that packers and canners of sea food could be required to pay license fees based upon the fish and oysters handled, including those shipped in from without the State. State vs. Applegarth, 81 Md. 293, 31 Atl. 961; Applegarth vs. State, 89 Md. 140, 42 Atl. 941; Barataria Canning Co. vs. State, 101 Miss. 890, 58 So. 769; State vs. Hume, supra.

The mere fact that a small per cent of the fish, after having been gilled, gutted and beheaded, and packed in barrels with ice, are shipped to other States does not prevent the State from subjecting that portion to the general tax. The mere fact that property in a State is intended for export or shipment in interstate commerce does not render it immune from a general tax on all similar property. Brown vs. Houston, 114 U. S. 622, 29 L. Ed. 257, 5 Sup. Ct. 1091; Coe vs. Errol, 116 U. S. 517, 29 L. Ed. 715, 6 Sup. Ct. 475.

But there is a second reason why the fish in this case have been so acted upon that the original immunity—if there is any in such a case as this—which attaches to merchandise imported from a foreign country, is not available to the appellant.

All the cases hold that the immunity is gone the instant the import is sold or otherwise acted upon by the importer so as to make it a part of the common mass of property in the State.

Even if these fish were imports, the appellant was not the importer. The appellant is a corporation and can only act by its officers and employees. Were the fish caught and brought into Galveston by the corporation, its officers or employees? The record affirmatively shows that they were not.

The catch was made by fishermen who paid the appellant forty per cent of the catch for the use of a fishing boat. Then, before dividing the balance of the fish between themselves on agreed shares, the fishermen paid for all towing, oil and fuel, groceries, ice and other supplies out of the catch of fish.

Both by custom and law, and the decisions of the courts the fishermen are the owners of the fish, and if they choose may take their share of fish and sell them to whomsoever they please. The mere fact that they ordinarily sell them to the concern from which they rent the boat does not change the original ownership of the catch.

In the case of Osborne vs. Jordan, 69 Mass. 277, the Supreme Judicial Court of Massachusetts in an opinion by Chief Justice Shaw, said:

> "There may be a question upon the true construction of the contract between the shipowner and the seamen, whether the lay or share of the seaman is to consist of an aliquot part of the oil and bone brought home in the ship, to be set off to him to hold specifically, or valuing these products in money, whether the seaman is entitled to receive his share of the money to which these products are valued. We are inclined to think, that, by the terms of this contract, the seaman is entitled of right to have his share of the oil set off to him specifically, to be disposed of as he thinks fit. But we believe that in a great majority of cases, perhaps we might say, almost all, the practice is, to value the oil, and for the owners to pay each one's lay in money. This is probably most convenient for all parties,

and when it is done fairly, and with the consent of the parties, there can be no objection to it, even though it be the right of the seaman to have his specific quantity of oil." (P. 279.)

The case of Cornelia M. Kingsland, 25 Fed. 856, is enlightening. In that case, as in this, forty per cent of the catch was delivered to the shipowner for the use of the boat. The suit was a libel filed by a fisherman for wages at the current rate of the port, authorized by Section 4523 of the Revised Statutes as to seamen. He had shipped on shares just as the fishermen did in the present case. The fishing voyages covered a year, and after paying the expense incurred there was nothing left to share. The court held that fishermen fish on shares for a proportion of the catch, and if the catch is only sufficient to pay for the use of the boat and the supplies used, the fisherman has no share left. There is no liability on the part of the shipowner for wages where the fisherman's catch is unprofitable to him.

Section 531 of Title 46 of the United States Code seems to have originally appeared as a part of the statutes in the Act of February 16, 1792. It shows that from the earliest days of the republic the fisherman has owned his share of the fish caught on the voyage.

"Article 531. The master of any vessel of the burden of twenty tons or upward, qualified according to law for carrying on the bank and other cod fisheries, or the mackerel fishery, bound from a port of the United States to be employed in any such fishery, at sea, shall, before proceeding on such fishing voyage, make an agreement in writing with every fisherman who may be employed therein, except only an apprentice or servant of himself or owner, and, in addition to such terms of shipment as may be agreed on, shall, in such agreement, express whether the same is to continue for one voyage or for the fishing season, and shall also express that the fish or the proceeds of such fishing voyage or voyages which may appertain to the fishermen shall be divided among them in proportion to the quantities or number of such fish which they may respectively have caught. Such agreement shall be indorsed or countersigned by the owner of such fishing vessel or his agent. (R. S. Sec. 4391.)

"Article 533. Whenever an agreement or contract is so made and signed for a fishing voyage or for the fishing season, and

any fish caught on board such vessel during the same are delivered to the owner or his agent, for cure, and sold by such owner or agent, such vessel, shall, for the term of six months after such sale, be liable for the master's and every other fisherman's share of such fish, and may be proceeded against in the same form and to the same effect as any other vessel is by law liable, and may be proceeded against for the wages of seamen or mariners in the merchant service. Upon such proceeding for the value of a share or shares of the proceeds of fish so delivered and sold it shall be incumbent on the owner or his agent to produce a just account of the sales and division of such fish according to such agreement or contract; otherwise, the vessel shall be answerable upon such proceeding for what may be the highest value of the shares demanded. But in all cases the owner of such vessel or his agent appearing to answer in such proceeding, may offer thereupon his account of general supplies made for such fishing voyage and of other supplies therefor made to either of the demandments, and shall be allowed to produce evidence thereof in answer to their demands respectively; and judgment shall be rendered upon such proceeding for the respective balances which upon such an inquiry shall appear." (R. S. Sec. 4393.)

We believe that under the facts of this case, if the fish might originally have been considered "imports" within the meaning of Article I. Section 10, of the Constitution, that in the lans of the appellant, and packed in barrels for shipment they are no longer in the hands of the importer, but have been so acted upon that they have become a part of the general mass of property in the State subject to taxation.

Third Counter Proposition.

A State tax of one dollar on each one thousand pounds of fish handled by a wholesale fish dealer in the State is valid even as to fish brought in from the waters outside of the State, especially so where the money raised in such manner is placed in a special fund to pay the salary and expense of inspectors who are charged with the duty of inspection of all fish handled by such wholesale dealer.

The contention of appellant in support of its third point is that the $10 license tax levied by the State of Texas on wholesale fish dealers by Article 936 of the Texas Penal Code of 1925, is on a parity with the $50 occupation tax levied directly on "importers" by the State of Maryland, and therefore falls by the reasoning of Brown vs. Maryland, supra. Only incidentally does appellant refer to the levy of $1.00 on each one thousand pounds of fish handled and seeks to dispose of the question of the inspection tax by saying that the question was given but slight consideration in the lower court.

The attorneys representing the appellee in submitting this brief were not present during the argument of the case before the three-judge court at New Orleans, and consequently are not in a position to say what was argued in support of the validity of the statute of Texas.

It suffices for our purposes to quote from the opinion rendered in the case where the court says that the third defense presented to sustain the tax was the following:

> "That conceding them (the fish) to be imports, the tax is levied and is necessary for inspection purposes to protect the fish and game, and therefore is levied under direct authority of the Constitution." (R. 21.)

In considering this contention the court says:

> "The second contention involves a delicate question of construction which is not made less difficult by the State of the decisions on the point, and we do not find it necessary to hazard an opinion on it, because the case in our view is controlled by answering the third contention, whether the tax can be sustained as an inspection tax in view of the nature of the subject matter and the structure of the statutes, for if it can be then the tax is valid and the injunction should be denied.
>
> "It is settled law that the State has the widest powers over not only the taking, but the handling of fish and game within its borders. People vs. Lassen, 106 N. W. 143; People vs. O'Neal, 68 N. W. 227; People vs. Booth Fisheries Co., 97 N. E. 837; Silz vs. Hesterberg, 211 U. S. 31.
>
> "In Silz vs. Hesterberg the Supreme Court held a law of the State of New York making it unlawful to possess game dur-

ing the closed season valid as against a dealer in imported game who had in his possession during the closed season the dead body of an imported bird.

"If the State has power to regulate the importation of fish and game in the interest of the protection of its own fish and game, it certainly has the power to levy an inspection tax to carry out that purpose, this we think cannot be questioned. It remains only to consider whether the tax can be reasonably referred to that head.

"It is established by the decisions that a presumption is indulged in favor of the legality and correctness of legislative action looking to the levy of an inspection tax, and that any tax levied by the Legislature which appears upon examination reasonably proportionate to the purposes and objects of inspection must be sustained. Red C Oil Co. vs. Board of Agriculture, 172 Fed. 695; New Mexico vs. Denver & Rio Grande Ry., 203 U. S. 38; Patapsco Guano Co. vs. North Carolina, 171 U. S. 345; Red C Oil Co. vs. North Carolina, 222 U. S. 381; Foote vs. Maryland, 232 U. S. 495.

"Considering the tax in question in the light of these authorities, having in mind its purposes and objects we have no hesitation in finding that the tax is properly laid as an inspection tax that it is therefore strictly within the constitutional provision and that the injunction should be denied." (R. 21-22.)

Manifestly the appellant cannot complain in this case of the validity of the Texas statute in so far as the levy of the $10 license fee on all wholesale fish dealers is concerned.

The agreed statement of facts shows that appellant has paid this $10 tax and procured from the Game, Fish and Oyster Commissioner of the State of Texas, a wholesale fish dealer's license. (R. 12.)

It is further agreed that the only question in the case arises from the refusal of the appellant after being licensed as a wholesale fish dealer to pay the further levy of one dollar on each one thousand pounds of fish handled by the appellant. (R. 12.) The appellee in his capacity as county and district attorney of Galveston County, Texas, was threatening to prosecute the appellant, its agents, and employees and this suit was brought to enjoin such criminal prosecution.

In such a case there is no question concerning the ten dollars paid

by the appellant for its wholesale fish dealer's license. The whole question is whether or not the tax of one dollar on each one thousand dollars of fish handled is an inspection tax which the State has authority to levy.

Article I, Section 10, clause 2, of the Constitution reads as follows:

> "No State shall without the consent of the Congress lay any impost or duty on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

In the case of Patapsco Guano Company vs. North Carolina, 171 U. S. 345, 43 L. Ed. 191, 18 Sup. Ct. 862, this court in an opinion by Chief Justice Fuller sustained an act of the Legislature of North Carolina levying a tax of twenty-five cents on each ton of fertilizer shipped into the State. The law provided for the inspection of fertilizer and this court held that the act was clearly within the authority of the State under Article I, Section 10, clause 2, of the Constitution. The court says:

> "The clause recognized that the inspection of such articles may be required by the States, and that they may lay duties on them to pay the expense of such inspections, but as it would be difficult, if not impossible, to determine the necessary amount with exactness and to remove any inducement to excess, it was provided that any surplus should be paid to the United States. As such laws are subject to the revision and control of Congress, it has been suggested that whether inspection charges are excessive or not might be for Congress to determine and not the courts, which would also be so where inspection laws operate on interstate as well as foreign commerce.
>
> "Inspection laws are not in themselves regulations of commerce, and while their object frequently is to improve the quality of articles produced by the labor of a country and fit them for exportation yet they are quite as often aimed at fitting them or determining their fitness, for domestic use, and in so doing protecting the citizen from fraud. Necessarily, in the

latter aspect, such laws are applicable to articles imported into, as well as to articles produced within a State."

With reference to the scope of inspection and the circumstances under which the amount of the charge levied may be questioned, this court in the case of Turner vs. Maryland, 107 U. S. 38, 27 L. Ed. 370, 2 Sup. Ct. 44, said:

"* * * Recognized elements of inspection laws have always been quality of the article, form, capacity, dimensions, and weight of packages, mode of putting up and marking and branding of various kinds, all these matters being supervised by a public officer having authority to pass or not pass the article as lawful merchandise, as it did or did not answer the prescribed requirements. It has never been regarded as necessary, and it is manifestly not necessary, that all of these elements should coexist in order to make a valid inspection law. Quality alone may be the subject of inspection without other requirement, or the inspection may be made to extend to all of the above matters. When all are prescribed, and then inspection as to quality is dropped out, leaving the rest in force, it cannot be said to be a necessary legal conclusion that the law has ceased to be an inspection law.

"The question of the right of Maryland, under the Constitution of the United States, to require that the dimensions and gross weight of a hogshead containing tobacco grown upon its soil shall be ascertained by its officers before the tobacco shall be exported is a question of law, because the question is as to whether such law is an inspection law. Moreover, the question as to whether the charges for such examination and its attendant duties are 'absolutely necessary' was not before the State court, and was not passed upon by it, and cannot be considered by this court."

In the case of Red "C" Oil Company vs. North Carolina, 222 U. S. 380, 56 L. Ed. 240, 32 Sup. Ct. 152, the court, in an opinion by Chief Justice White said that it would not lightly attribute improper motives to the State Legislature and would not on a mere charge regard a statute imposing inspection fees as an act to raise revenue. With reference to the showing a complainant must make

before the court will strike down an act relating to inspection, it was said:

> "The contention that the tax is so excessive on its face as to conclusively evidence the unconstitutionality of the burden, if imposed as a mere inspection charge, is, we think, also without merit. Prima facie the charge must be deemed to be reasonable.
>
> "If the trial made of the act establishes the fact to be as asserted, that the exaction in question is excessive, the presumption is that in the orderly conduct of the public business of the State the necessary correction will be made to cause the act to conform to the authority possessed, which is to impose a fee solely to recompense the State for the expenses properly incurred in enforcing the authorized inspection. What relief should be awarded in the event the Legislature of North Carolina failed in its positive duty in this particular is not a question open for consideration upon this record, as no such failure of duty on the part of the Legislature had occurred or could possibly have happened when this suit was commenced a few days after the passage of the act."

In the case of Foote vs. Maryland, 232 U. S. 494, 58 L. Ed. 698, 34 Sup. Ct. 377, this court had under consideration the statute of Maryland imposing a tax of one cent on each bushel of oysters packed in the State whether brought from without the State or not. The act was specifically attacked on the ground that it was a revenue measure and that the collections were largely in excess of what was required for inspection purposes. The court, in an opinion by Mr. Justice Lamar, says:

> "The Constitution prohibits a State from regulating interstate commerce, but at the same time authorizes the collection of the necessary expenses of its inspection laws with the result that interstate commerce is to that extent lawfully burdened. Inspection is intended to determine the weight, condition, quantity and quality of merchandise to be sold within or beyond the State's borders. It is usually 'accomplished by looking at or weighing or measuring the thing to be inspected.'
>
> "Inspection necessarily involves expense and the power to fix the fee, to cover that expense, is left primarily to the Legislature which must exercise discretion in determining the

amount to be charged, since it is impossible to tell exactly how much will be realized under the future operations of any law. Beside, receipts and disbursements may so vary from time to time that the surplus of one year may be needed to supply the deficiency of another. If, therefore, the fees exceed cost by a sum not unreasonable, no question can arise as to the validity of the tax, so far as the amount of the charge is concerned. And even if it appears that the sum collected is beyond what is needed for inspection expenses, the courts do not interfere, immediately on application, because of the presumption that the Legislature will reduce the fees to a proper sum. Red C Oil Co. vs. North Carolina, 222 U. S. 380, 393. But when the facts show what was known to be an unnecessary amount has been levied, or that what has proved to be an unreasonable charge is continued, then, they are obliged to act in the light of those facts and to give effect to the provisions of the Constitution prohibiting the collection by a State of more than is necessary for executing its inspection laws. In such inquiry they treat the fees fixed by the Legislature for inspection proper as prima facie reasonable and do not enter into any nice calculation as to the difference between cost and collection; nor will they declare the fees to be excessive unless it is made clearly to appear that they are obviously and largely beyond what is needed to pay for the inspection services rendered."

See also McLean vs. Denver & Rio Grande Railroad Company, 203 U. S. 38, 51 L. Ed. 78, 27 Sup. Ct. 1, wherein this court sustained a statute of New Mexico levying a tax of ten cents on each hide shipped from the State, where the hides were subject to inspection.

The question then becomes important as to whether the statute of Texas calls for inspection.

Article 936 of the Texas Penal Code of 1925 provides that any individual, firm or corporation engaged in the business of wholesale dealer in fish and oysters shall secure from the Game, Fish and Oyster Commissioner a license. In the application for license the applicant must agree that all products handled by him shall at all times be subject to the inspection of the Game, Fish and Oyster Commissioner or any of his deputies, and in the application he authorizes the Commissioner or any of his deputies to enter his place of business

or any place where he may store such products, and inspect the same. The applicant agrees to keep a correct record of all fish, oysters, shrimp and other marine life handled by him in a book furnished by the Game, Fish and Oyster Commissioner. For such license the applicant is required to pay one dollar for each one thousand pounds of fish, shrimp or crabs handled and one cent on each barrel of oysters handled. Article 965 makes it unlawful to sell, ship or possess for the purpose of sale any fish or oysters taken from unsanitary or polluted reefs or beds. Article 972 prohibits the dealer from placing oysters in any insanitary receptacle. Article 973 prohibits the dealer from possessing for sale or selling any oysters or shellfish in which preservatives have been placed. There are other detailed provisions with reference to fish, shrimp, oysters, turtles and other marine life. As a licensed wholesale fish dealer the appellant is authorized to deal in any or all forms of marine life and hence his products, books, records and place of business must be inspected by the Commissioner or his deputies to see that the law has been complied with in these various respects. Article 924 prohibits the catching of fish, turtle or terrapin by powder, dynamite, drugs or other deleterious substances.

By Article 4023 of the Revised Civil Statutes of Texas of 1925, it is made the duty of the Game, Fish and Oyster Commissioner to collect all taxes, licenses and fines imposed by law, to enforce their payment and to inspect all the products so taxed, to verify the weights and measures thereof, to examine the streams, lakes and ponds where fish are stored, and he has certain other general duties appropriate to such an office.

The purpose for which the funds raised are used are set forth in Article 4030 of the Revised Civil Statutes, which reads as follows:

> "Article 4030. All funds collected by the Game, Fish and Oyster Commissioner from the sale of commercial fisherman's licenses, fish dealers licenses, taxes on fish, crabs, oysters and shrimp, and all other taxed marine life, and all fines and penalties collected for any infraction of any laws relating to commercial fishermen, shall be placed in the State Treasury to the credit of a fund to be known as 'Fish and Oyster Fund,' and,

> together with the money now to the credit of this fund, is hereby appropriated and shall be used by the Game, Fish and Oyster Commissioner in the enforcement of the fish and oyster laws of this State, and in the dissemination of useful information pertaining to the economic value of fish and oyster marine life; the making of scientific investigations and surveys of the principal sea food fishes and marine life for purpose of the better protection and conservation of same, the propagation and distribution of sea food fishes, oysters, and other marine life; the purchase, repair and operation of boats and employment of deputies to carry out and enforce the provisions of this act." (Acts 1925, p. 446.)

We have attached to this brief as Appendix "A" certain of the Texas statutes relating to fisheries which have a bearing upon the questions raised in this case. From them the court will note that in addition to the tax of one dollar levied on each one thousand pounds of fish handled by each wholesale fish dealer that money from a number of other sources go into the fish and oyster fund. The appellant has not even attempted to show that the revenue produced from this source is excessive or disproportionate to the expense to which the State of Texas is put in furnishing records and inspecting the sea food products handled by the appellant and others engaged in similar activities.

The truth is that if the fish and oyster fund had to depend upon the tax which should be paid by the appellant the activities of that division of the Game, Fish and Oyster Commission would have to be considerably curtailed. For the information of the court, we quote from the Acts of the First Called Session of the Fortieth Legislature of Texas (1927), page 286, which shows that in addition to a large appropriation from other sources for the Game, Fish and Oyster Commission and its work, a specific appropriation of twenty-five thousand two hundred dollars is appropriated specifically to fish and oyster inspection and protection, and in addition thereto all the current revenue which comes into the fish and oyster fund is likewise appropriated to the purposes enumerated in Article 4030. This portion of the act reads as follows:

"Fish and Oyster Fund.

The following specific appropriations are hereby made from the fish and oyster fund:

Salaries of:	For the years ending Aug. 31, 1928.	Aug. 31, 1929.
Director, Division Salt Water Operations	$ 2,400.00	$ 2,400.00
Stenographer	1,500.00	1,500.00
Eight boat captains at $1500 each	12,000.00	12,000.00
Two mates at $900 each	1,800.00	1,800.00
Provisions for two boats with mates, $300 each	600.00	600.00
Provision for six boats, $150 each	900.00	900.00
Two captains, oyster dredges, $1500 each	3,000.00	3,000.00
Fish and shrimp culture	1,500.00	1,500.00
Superintendent oyster culture	1,500.00	1,500.00
Total salaries	$ 25,200.00	$ 25,200.00
Grand total, Game, Fish and Oyster Commission	$ 81,900.00	$ 79,600.00

"The fish and oyster fund and all moneys in the State Treasury now credited to such fund, together with the current revenue to be derived and placed to the credit of this fund, during the next ensuing two years, is hereby appropriated for the purpose provided in Article 4030, Revised Civil Statutes; which fund shall be used in the enforcement of the fish and oyster laws of this State, and in the dissemination of useful information pertaining to the economic value of fish and oysters and marine life; the making of scientific investigations and surveys of the principal sea food fishes, and marine life, for the purpose of better protection and conservation of the same, the propagation and distribution of sea food fishes, oysters, and other marine life, the purchase, repair, and operation of boats, and the employment of deputies to carry out and enforce the provisions of this act."

For the information of the court we have collected in Appendix "B" statutes from a number of other states which border upon the high seas which show that in some a tax greater in amount is levied

than that levied by Texas, and in others a lesser amount. This merely amplifies the statement found on page 14 of the printed record.

Conclusion.

We conclude that, so far from being an invalid imposition, the statute of Texas is a legitimate exercise of the power of the State and is not in conflict with any Federal statute or with the Constitution of the United States. We believe that both from the facts in this case and from the decisions cited that fish caught in the open sea and in the waters off the coast of Mexico by fishermen on an American vessel are not imports within the meaning of Article I, Section 10, Clause II, of the Constitution, when brought into a port of the United States. The various States and this court in its decisions hold that fish are not ordinary articles of commerce and the Federal government has stated that fish caught in the open sea or in foreign waters by fishermen on American vessels are not imports and hence have the right to enter this country without the imposition of any duties. If the fish had been imports under the facts in this case the original importers were the fishermen and in the hands of the appellant the immunity attached to imports had been lost and the fish had been so acted upon and processed as to incorporate them in the general mass of property in the State. And, further, that the tax levied is clearly sustainable as an inspection duty which the States are specifically authorized to levy by the clause of the Constitution heretofore discussed.

Respectfully submitted,

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APPENDIX "A."

TEXAS PENAL CODE, 1925.

Article 924. *Explosives and Poisons.*—The catching, taking or the attempt to catch or take any fish, green turtle or terrapin in any of the salt or fresh waters, lakes or streams in the State by poison, lime, dynamite, nitroglycerine, giant powder, or other explosive, or by the use of drugs, substances, or things deleterious to fish life, is hereby prohibited; and any person offending against this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars, and by confinement in the county jail not less than thirty nor more than ninety days.

Article 934. *License to Fish for Market.*—Whoever fishes in the public waters of this State for oysters, fish, shrimp, turtle, terrapin, crabs, clams or other marine life for market or sells such product of such waters without first procuring a license to do so, as provided by law, shall be fined not less than ten nor more than fifty dollars. (Acts 1895, p. 173, Acts 1897, p. 126, Acts 1913, p. 270, Acts 2nd C. S., 1919, p. 200, Acts 1923, p. 295.)

Article 935. *Refusal to Show License.*—Any person fishing for market or for the sale of marine life and having a license therefor who refuses to show it to the Commissioner, or his deputy when requested to do so, shall be fined not less than five nor more than twenty-five dollars. (Acts 2nd C. S., 1919, p. 200.)

Article 936. *Wholesale Dealer's License.*—Any individual, firm or corporation engaged in, or who may engage in the business of a wholesale dealer in fish and oysters shall secure from the Game, Fish and Oyster Commissioner, or one of his deputies, a license granting such individual, firm or corporation, permission to engage in said occupation for one year. For the purpose of obtaining this license, the applicant desiring same must make written application to the Game, Fish and Oyster Commissioner, or one of his deputies, in which he (the applicant) shall set forth under oath,

if required, that he is a citizen of the United States by birth, or not being so, shall state he has been granted full naturalization papers, and by what court and at what time they were granted. Where a corporation applying for permit to conduct a wholesale business in fish, oysters, or other marine products as mentioned, contains foreigners, it shall conform to the foregoing provision as applied to individual applicants. He shall also agree that because of the privilege which he applied for from the State of Texas, that all products handled by him shall, at all times, be subject to the inspection of the Game, Fish and Oyster Commissioner, or any of his deputies, and in said application he shall authorize said Commissioner or any of his deputies to enter his place of business, or any place where he may have such products stored, and inspect same. He shall agree to keep correct record of all fish, oysters, shrimp and other taxed marine life handled by him under this law, in a book to be furnished by the Game, Fish and Oyster Commissioner; and, further, that failure on his part to keep a correct record shall be grounds for the forfeiture of his license granted him under the application aforesaid. This application, having been duly executed and delivered to the Game, Fish and Oyster Commissioner, or any of his deputies, together with a fee of ten dollars for same, it shall be the duty of the Game, Fish and Oyster Commissioner, or his deputy to issue to the applicant a license to engage in the business set forth in the application. Said license must be signed by the Game, Fish and Oyster Commissioner, or one of his deputies, stamped with the seal of his office, and state the name of the licensee, place of business and the kind of license applied for, and shall be good for twelve months following the date of issuance. For such license, the applicant shall pay one dollar for each one thousand pounds of fish, shrimp and crabs handled by him, and a tax of one cent per barrel on oysters handled by him, which tax shall be paid monthly, the tax to be paid on the first of each month, which may be due upon said product handled during the preceding month, as shown by the record books hereinbefore mentioned. And any person, firm, or corporation, or association of persons, or any

officer, agent or employe of any company, corporation or association of persons who shall engage in the business of a wholesale dealer in fish and oysters or either, without procuring a license to follow said business, or without paying the tax and fee required by this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars, nor more than two hundred dollars; and each day such business may be engaged in violation of this article, shall constitute a separate offense, and upon conviction of pursuing said occupation without payment of the tax and fee required by law, or for any other violation of the game, fish and oyster law, the license of such dealer shall be forfeited. A wholesale dealer, in the meaning and definition of this chapter, is any person, corporation or firm or partnership engaged in the business of buying and selling or handling for shipment, fish, oysters, shrimp, turtle, terrapin, crabs, clams, lobsters or other commercial marine life, in quantities of ten pounds or more to any customer during the same day, or whose daily sales, or whose sales for any one day, amount to more than the aggregate of one hundred pounds of above mentioned marine products.

Article 937. *"Barrel of Oysters," Tax.*—There is hereby levied a tax of not less than one-fifth of one per cent per pound on all fish and shrimp taken and sold or offered for sale in this State, and not less than two cents a barrel on all oysters sold or offered for sale in this State whether from private or public beds and offered for sale or shipment, and not less than one-half a cent per pound on all turtles, and not less than twenty-five cents on each terrapin offered for sale and shipment. Such tax shall be paid under such rules and regulations as the Commissioner shall prescribe. For all purposes mentioned in this chapter a barrel of oysters shall be deemed to consist of three boxes of oysters in the shell, said boxes to be ten inches wide by twenty inches long and thirteen and one-half inches in depth. In filling such boxes for measurement, such oysters shall be placed so as not to fill such box more than two and one-half inches in the center above the height of the box. Two gallons of shucked oysters without their shells shall be deemed as equal

to one barrel of oysters in the shell. (Acts 2nd C. S. 1919, p. 193.)

Article 938. *Measurement of Oysters.*—Whoever shall use any measurement other than that established in Article 937 for the measurement of oysters in the purchase and sale of oysters, shall be fined not less than ten nor more than twenty-five dollars, and any person who shall fill the measuring box in the buying and selling of oysters higher than two and one-half inches in the center of such box, shall be fined not less than ten nor more than twenty-five dollars. (Acts 1913, p. 275, Acts 2nd C. S. 1919, p. 194.)

Article 939. *Failure to Pay Tax.*—Any person who shall not pay or who shall refuse to pay the tax imposed on the taking and sale of fish, oysters, turtle, terrapin and shrimp, as imposed in Article 10 of Acts 1925, p. 439, or who shall not pay or shall refuse to pay the taxes established and fixed by the Game, Fish and Oyster Commissioner in Article 10 of said act, shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum not less than fifty dollars nor more than one hundred dollars, and if such person shall be a licensed fish dealer or fisherman or oysterman, his license as a fish dealer or fisherman shall be cancelled and not reissued for a period of three years.

Article 940. *Refusing to Pay Tax.*—If any person shall refuse to pay any tax provided in this chapter, on any fish, oyster, shrimp, turtle, terrapin, clam, crabs, or other marine life, which he has sold, he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than fifty nor more than two hundred dollars.

Article 941. *Using Seines or Gigs.*—It shall be unlawful for any person at any time to place, to set, or drag, any seine or net, or use any other device or method for taking fish other than the ordinary pole and line or cast net, or minnow seine of not more than twenty feet in length for catching bait within the waters of Agua Dulce Creek, Oso Creek, Shamrock Cove, Nueces Bay, Ingleside Cove, Red Fish Cove, Shoal Bay, Mud Flats, Shallow Bay, all of Aransas Bay between Port Aransas and Corpus Christi Bayou, and lying between Harbor Island and Mud Island, Copano Bay, Mission Bay, in Refugio County, Puerto Bay, St. Charles Bay, Hynes Bay, Contre

Lake, Powderhorn Lake, Oyster Lake, the waters of the Gulf Shore Line one-fourth mile from mean low tide from the south end of Padre Island to a point on Mustang Island two miles north of Corpus Christi Pass, Offats Bayou in Galveston County from its head to its mouth, Sabine Pass, leading from Sabine Lake to the Gulf of Mexico, San Luis Pass, leading from Galveston West Bay to the Gulf of Mexico, Turtle Bay, Lost Lake or Old River Lake in Chambers County, as shown by the government charts, Brown's Cedar Pass, Mitchell's Cut, Pass Cavallo, leading from Matagorda Bay to the Gulf of Mexico, Cedar Bayou, leading from Mesquite Bay to the Gulf of Mexico, North Pass or St. Jo Pass, Aransas Pass, leading from Aransas Bay to the Gulf of Mexico, Corpus Christi Pass, leading from Corpus Christi Bay to the Gulf of Mexico, Brazos Santiago Pass, leading from the Lower or Laguna Madra to the Gulf of Mexico or the pass on the north of Laguna Madra, leading into Corpus Christi Bay, which pass shall be defined as beginning one-fourth of a mile southwest of Peat Island and running from said point to Flour Bluff, all of said waters being situated in Nueces County, and all other passes connecting the bays and tidal waters of the State within the Gulf of Mexico, or within one mile of such passes, or within the waters of any pass, stream, or canal, leading from one body of Texas bay or coastal waters into another body of such waters; provided, that nothing in this article shall prevent the use of spear or gig and light for the purpose of securing flounders from such passes, at any time of the year except the months of November and December, which months shall constitute a closed season on flounders in all coastal waters of the State, and it shall be unlawful to possess or to take any flounder from the tidal waters of this State during the months of November and December of any year. And the Game, Fish and Oyster Commissioner, whenever he has reason to believe it is best for the protection and conservation and increase of fish life, or to prevent their destruction in the bays or parts thereof, or such tidal waters is hereby authorized to close such waters against fishing with any seine, net, spear, gig, light or other devices, except with hook and line or cast net or minnow seine of not more than twenty feet in length; but before closing bays or parts thereof, or of other

tidal waters against such seining or netting or the using of gigs, spears and lights, the Game, Fish and Oyster Commissioner shall give notice of a public hearing, and shall hold a public hearing at the port nearest the waters proposed to be closed and shall give notice of his intentions to close such bays or parts thereof of such tidal waters at least two weeks prior to such closing, giving the reason why such action is deemed necessary, and which notice shall contain a designation of the area which it is proposed to close, a statement that after the date indicated in such notice it shall be unlawful to drag a seine or net or use a gig or spear and light in taking fish from such bayou or parts of such tidal waters for the period of time which the Commissioner in said notice shall declare same to be closed; and such notice shall be posted in such fish houses as are in two towns nearest waters to be closed, and such notice shall contain the information as to where and when the public hearing is to be held; and provided further, that the Game, Fish and Oyster Commissioner shall have the authority, when proper hearing has been had, and investigation been made, and he has determined that any such closed area in the tidal waters of this State does not promote conservation of fish, to open such areas to seining, netting, gigging and fishing of all sorts. For the purpose of locating all closed waters mentioned in this chapter it shall be the duty of the Game, Fish and Oyster Commissioner to have erected suitable stakes, monuments or markers at points determined by him as being the outermost boundaries of such closed waters, such stakes or markers to bear the words, "Warning—Closed Waters." Any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and on first conviction shall be fined not less than fifty dollars, nor more than two hundred dollars, and shall have his license revoked for a period of time not exceeding two years; and on second conviction shall be confined in the county jail for not less than thirty nor more than ninety days, and shall have his license revoked for a period of not less than two years; provided further, that the Game, Fish and Oyster Commissioner or his deputy shall have power to seize and keep such seines or other tackle in his possession as evidence until trial of defendant, and no suit shall be maintained against him therefor.

Article 942. *Unlawful Possession of Seine.*—Whoever shall carry on, or over, or into the waters of any pass leading from the inland bays or tidal waters of this State to the Gulf of Mexico any seine or net except a cast net used for catching bait, or a minnow net not exceeding twenty feet in length or shall carry by vehicle or in any other way, any seine or net except a cast net used for catching bait or a minnow seine not exceeding twenty feet in length to any point or place within one mile of such pass or shall have in his possession within one mile of any such pass any net or seine except a cast net for catching bait, or a minnow seine not exceeding twenty feet in length, shall be fined not less than twenty-five nor more than two hundred dollars, and be confined in the county jail not less than thirty nor more than ninety days. Nothing in this law shall apply to the carrying of nets or seines over closed waters within one mile of any town. (Acts 2nd C. S. 1919, p. 205; Acts 1923, p. 298.)

Article 945 (912). *Seining in Salt Water.*—The mesh of all seines and nets used for taking fish in salt waters of this State, not including the bag, shall not be less than one and one-half-inch square mesh. The mesh of the bags and for fifty feet on each side of the bags, shall not be larger than a one-inch square mesh. No seine or net of any kind of over two thousand feet shall be dragged or pulled in the salt water of this State, and any person dragging such seine, or dragging two or more seines which are connected or tied together with a combined length of more than two thousand feet, shall be upon first conviction thereof fined not less than twenty nor more than one hundred dollars; upon second conviction thereof shall be fined not less than fifty nor more than two hundred dollars, and shall have his license revoked for a period not less than thirty nor more than ninety days; and upon third conviction thereof shall be confined in jail for not less than thirty nor more than ninety days, and shall have his license revoked for a period of not less than one year. (Acts 2nd C. S. 1919, p. 201.)

Article 947 (906). *Seining Within One Mile from City.*—It shall be unlawful for any person to catch or attempt to catch any fish, green turtle, loggerhead, terrapin or shrimp in any of the bays or navigable waters of this State, within the limits or within one mile

of the limits of any city or town in this State, with seines, drags, fykes, set nets, trammel nets, traps, dams or weirs. A town or city in the meaning of this article shall be the collection of one hundred families within an area of one square mile. Anyone violating any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars. In all prosecutions the identification of the boat from which such violation occurs shall be prima facie evidence against the owner, lessee, person in charge or master of such boat. It shall be the duty of such town to establish and maintain the buoys, stakes or other marks designating the limits of the one mile within which such seines shall be hauled and such nets set. (Acts 1897, p. 269; Acts 2nd C. S. 1919, p. 201.)

Article 949. *Seiners Shall Return Small Fish.*—Any person dragging a seine or engaging in taking fish in a set net shall return to the water all fish under and above size according to the measure or weight established in this chapter, and all other fish except sharks, gars, rays, turtle and terrapin, sawfish and catfish, except the gulf topsail cat, which may be retained, and any person not returning such fish to the water as required by this article shall be fined not less than fifty nor more than one hundred dollars. (Acts 2nd C. S. 1919, p. 211.)

Article 950. *Net for Shrimp.*—The Commissioner is hereby authorized to permit the use of any shrimp seine or other device for catching shrimp in the tidal waters of this State. Any person desiring to use such seine shall apply to the Commissioner, or his deputy, for a permit to use such seine, net or other contrivance for catching shrimp and such Commissioner or his deputy shall fix and establish the mesh, construction, depth and length of such seine or net or other contrivance so that it shall not be used for other purposes than in taking shrimp, and he shall tag such seine officially and issue such permit and shall state in what waters and localities such seines or nets shall be used. Any person using such shrimp seine or other contrivance for catching shrimp in the tidal waters of this State without the permit herein provided for, or who shall use any seine or contrivance or net in any waters or locality other than that

stated in such permit, shall be fined not less than twenty-five nor more than two hundred dollars.

Article 954. *Fish Pound in Gulf Waters.*—It shall be unlawful for any person, firm or corporation to erect, set, operate or maintain any fish pound net in any waters of the Gulf of Mexico within three nautical miles from the coast line of this State, without first obtaining a permit for such purpose. Application for such permits shall be made to the Game, Fish and Oyster Commissioner. Such Commissmissioner shall issue to the person, firm or corporation applying therefor, if entitled thereto under the provisions of this chapter a permit duly signed, to erect, set, operate or maintain a fish pound net in the waters above specified. No person, firm or corporation shall set, erect, operate or maintain any pound net at any place closer than three miles of any other pound net owned or operated by any other person, firm or corporation. No pound net shall ever be placed or operated closer than three miles of any pass mentioned in this chapter. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than fifty dollars nor more than two hundred dollars.

Article 957. *Season for Salt Water Terrapin.*—Whoever kills, takes or has in his possession any salt water terrapin at any time except during November, December, January and February shall be fined not less than fifty nor more than one hundred dollars. (Acts 2nd C. S. 1919, p. 208.)

Article 958. *Under Weight Turtle or Terrapin.*—Whoever sells or ships any green turtle of less than twelve pounds in weight or terrapin of less than six inches in length of under shell shall be fined not less than ten nor more than two hundred dollars. (Acts 1895, p. 173; Acts 1913, p. 270.)

Article 959. *Buoy or Marker.*—Whoever shall deface, injure or destroy or remove any buoy, marker or fence or any part thereof, used to designate or enclose a private oyster bed or a location where oysters have been deposited to be prepared for market without the consent of the owner thereof, or any buoy, marker or sign placed or used by the Commissioner for the purpose of designating any waters

closed against fishing for oyster taking, without the consent of said Commissioner, shall be fined not less than fifty nor more than two hundred dollars. (Acts 2nd C. S. 1919, p. 200.)

Article 960. *Public or Private Oyster Bed.*—All oyster beds shall be public or private; all not designated private shall be public. All natural oyster beds and oyster reefs of this State shall be deemed public and a natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found within twenty-five hundred square feet of any position of said reef or bed and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Commissioner, but this shall not apply to a reef or bed that has been exhausted within a period of eight years. (Acts 2nd C. S., 1919, p. 193.)

Article 961. *Right to Private Oyster Bed.*—When any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location of land in this State, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting or sowing oysters within the metes and bounds of the official grant or patent. The Commissioner may require the owner of oysters produced in said water when offered for sale, to make an affidavit that such oysters were so produced. The failure of the person claiming that such oysters were produced on his private oyster bed or bottoms, to have and to show such affidavit to the Commissioner or one of his deputies, or to whoever he offers such oysters for sale, shall be presumptive that such oysters were taken from a public bed, and on prosecution for the same it shall devolve on the defendant to show that such oysters were taken from his private bed or bottom of oysters. (Acts 2nd C. S. 1919, p. 193.)

Article 963. *License to Dredge Oysters.*—Anyone who is an American citizen or any firm or any corporation composed of such citizen desiring to use scrapers or dredges in removing oysters from the natural oyster reefs of this State shall procure from the Commissioner or his deputy a license to do so. It is unlawful to use a

dredge or any means other than hand tongs in removing oysters from such reefs in bodies of water less than four feet deep, and it is unlawful to use a power dredge except one operated by land power for removing oysters from such reefs in bodies of water less than six feet deep. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars. (Acts 1891, p. 157, Acts 1913, p. 269, Acts 2nd C. S., 1919, p. 207, Acts 1923, p. 298.)

Article 964. *Oysters from Closed Reef.*—Whenever the Commissioner believes that any public reef is being overworked or damaged in any way, or where such reef has been worked under his supervision, he may close such reef against anyone taking oysters from it, but before he closes it he shall give two weeks' notice of such closing by posting notices in such fish houses as are in two towns nearest such reef. In such notices he shall state the date of closing and the time for which such reef shall be closed. Whoever takes oysters from such reefs within the time closed by the Commissioner shall be fined not less than twenty-five nor more than two hundred dollars. (Acts 1913, p. 274, Acts 2nd C. S., 1919, p. 207.)

Article 965. *Oysters from Insanitary Reef.*—It shall be unlawful to ship, sell or possess for the purpose of sale any fish or oysters taken from insanitary or polluted reefs or beds. Any reef or bed of oysters which has been declared by the State Health Department as insanitary or polluted is within the meaning of this article insanitary and polluted. Whoever sells or has in his possession for the purpose of sale fish or oysters taken from such insanitary or polluted reef or bed shall be fined not less than twenty-five nor more than two hundred dollars. (Acts 2nd C. S., 1919, p. 209.)

Article 966. *Taking Oysters in Closed Season.*—Whoever shall take or catch oysters from any public beds or reefs for sale or for market from the first day of April to the first day of September shall be fined not less than ten nor more than two hundred dollars. Each day is a separate offense. That part of the Laguna Madre which is south and west of Baffin's Bay is exempt from the operation of this article. (Acts 2nd C. S. 1919, p. 206.

Article 967. *Buying or Planting Oysters in Closed Season.*—Whoever plants or buys oysters for planting, bedding, marketing or any other purpose from the first day of May to the first day of September in any year without the consent of the Commissioner shall be fined not less than ten nor more than one hundred dollars. (Acts 1891, p. 155, Acts 1913, p. 269.)

Article 972. *Using Insanitary Container.*—Any receptacle for oysters which has not been thoroughly cleaned before oysters are placed in it, is hereby declared to be insanitary. Whoever sells oysters from such receptacle, or ships oysters in such receptacle shall be fined not less than twenty-five nor more than one hundred dollars. (Acts 2nd C. S. 1919, p. 209.)

Article 973. *Floating or Bloating Oysters.*—No person, firm or corporation shall ship into or in this State, sell or have in his possession for the purpose of sale, any oyster or shell fish in which any formaldehyde or other preservative has been placed, or any oysters or other shell fish which have been subjected to "floating," "drinking" or "bloating," in water containing less salt than in which they are grown, or oysters or other shell fish to which water has been added either directly or indirectly or in the form of melted ice. Unpolluted salt cold or ice water may be used in washing shucked or shelled oysters or other shell fish, if the washing does not continue any longer than the minimum time necessary for chilling, and whoever engages in "floating," "drinking" or "bloating" oysters in this State, or who ships into or in this State such oysters, or who has in his possession, sells or offers to sell any such oysters, shall be fined not less than twenty nor more than two hundred dollars.

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Section 1. The Game, Fish and Oyster Commissioner of this State is hereby authorized to construct and maintain salt water hatcheries, and propagation farms for fish, oysters and game, or

either of same, on islands owned by the State of Texas in the coastal waters of the Gulf of Mexico touching this State; and the cost and expenses thereof shall be borne out of the money available to said Commissioner for the enforcement of the game, fish and oyster laws of this State.

REVISED CIVIL STATUTES, 1925.

Article 4021. *Fish and Oyster Deputies.*—The Commissioner is authorized to appoint deputies for each of the vessels owned by the State and employed in the Fish and Oyster Department, and such other shore and interior deputies as he may deem necessary for the enforcement of the law. All such deputies shall have and exercise the same powers and duties as the Commissioner, and be at all times subject to his orders, and shall hold their office at his pleasure. Each Deputy Fish and Oyster Commissioner shall be ex-officio game commissioner. No person shall hold such office of Deputy Commissioner who is not a citizen of the United States and of this State. All such Deputy Commissioners shall make a monthly report to the Commissioner of all funds collected by them, remitting along with said report all moneys collected by them during the said month. (Acts 2nd C. S. 1919, p. 213.)

Article 4023. *Salaries and Expenses.*—Out of any available funds, the Commissioner and all Fish and Oyster Deputies and employes of the Game, Fish and Oyster Commission shall be paid their salaries and expenses monthly, upon approval of the Commission, the Comptroller drawing his warrant in favor of each of said persons on the special funds appropriated for said purposes as follows: The Commissioner, thirty-six hundred dollars per annum, and not more than fifteen hundred dollars per annum for traveling and other expenses, to be paid on vouchers approved by the Governor, showing that such amounts have been actually expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State laws and charts necessary to the execution of the duties of his office; the chief deputy game, fish and oyster commissioner and all other deputy fish and oyster commis-

sioners and employes of the Game, Fish and Oyster Commission, except special game deputies, deputies employed at fresh water fish hatcheries and sand, shell and gravel deputies, shall be paid their salaries and expenses monthly upon approval of the Game, Fish and Oyster Commissioner out of the fish and oyster fund, the Comptroller drawing his warrant in favor of each of said persons on the fish and oyster fund, appropriated for said purposes, as follows: Chief deputy game, fish and oyster commissioner, twenty-five hundred dollars per annum; deputies on boats, not to exceed one hundred twenty-five dollars per month; mates on boats, eighty dollars per month; shore deputies, not to exceed one hundred twenty-five dollars per month; lake deputies, not to exceed one hundred twenty-five dollars per month; assistant lake deputies, not to exceed seventy-five dollars per month; supervisor of coastal fisheries not to exceed one hundred fifty dollars per month. It shall be the duty of the Game, Fish and Oyster Commissioner to collect all taxes, licenses and fines as imposed by law, and enforce their payment, to inspect all products so taxed, and to verify the weights and measures thereof, to collect license fees, to collect all rents on locations for planting oysters, to examine or have examined, all streams, lakes or ponds, when requested to do so, for the purpose of stocking such waters with fish best suited to such locations, and he shall superintend and have control in the propagation of fish in the State fish hatcheries, and the distribution of such fish, and he shall have superintendence and control of the propagation and distribution of birds and game in the State reservations over which he may have control, or which may be established for such propagation. He shall also be allowed a sum not to exceed fifteen hundred dollars per annum for traveling and other expenses to be paid on vouchers showing that such amounts have actually been expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State laws and charts necessary to the execution of the duties of his office. (LL., p. 449.)

Article 1026. *Property of State.*—All fish and other aquatic animal life contained in the fresh water rivers, creeks and streams and

in lakes or sloughs subject to overflow from rivers or other streams within the borders of this State are hereby declared to be the property of the people of this State. All of the public rivers, bayous, lagoons, creeks, lakes, bays and inlets in this State, and all that part of the Gulf of Mexico within the jurisdiction of this State, together with their beds and bottoms, and all of the products thereof, shall continue and remain the property of the State of Texas, except in so far as the State shall permit the use of said waters and bottoms, or permit the taking of the products of such bottoms and waters, and in so far as this use shall relate to or affect the taking and conservation of fish, oysters, shrimp, crabs, clams, turtle, terrapin, mussels, lobsters, and all other kinds and forms of marine life, or relate to sand, gravel, marl, mud shell and all other kinds of shell, the Game, Fish and Oyster Commissioner shall have jurisdiction over and control of, in accordance with and by the authority vested in him by the laws of this State. (Acts 1925, p. 438.)

Article 4027. *Oyster Beds.*—All oyster beds not designated private shall be public. All natural oyster beds and reefs of this State shall be public. A natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found therein within twenty-five hundred square feet of any position of said reef or bed; and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Commissioner, but this shall not apply to a reef or bed that has been exhausted within a period of eight years. (Acts 1919, p. 289.)

Article 4030. *Fish and Oyster Fund.*—All funds collected by the Game, Fish and Oyster Commission from the sale of commercial fishermen's licenses, fish dealers' licenses, taxes on fish, crabs, oysters and shrimp, and all other taxed marine life, and all fines and penalties collected for any infraction of any laws relating to commercial fishermen, shall be placed in the State Treasury to the credit of a fund to be known as "Fish and Oyster Fund," and, together with the money now to the credit of this fund, is hereby appropriated and shall be used by the Game, Fish and Oyster Commissioner in the enforcement of the fish and oyster laws of this State, and in the dissemination of useful information pertaining to the economic value

of fish and oyster marine life; the making of scientific investigations and surveys of the principal sea food fishes and marine life for purpose of the better protection and conservation of same, the propagation and distribution of sea food fishes, oysters, and other marine life; the purchase, repair and operation of boats and employment of deputies to carry out and enforce the provisions of this act. (Acts 1925, p. 446.)

Article 4032. *License to Fish.*—Any person who is an American citizen, or an alien who has filed his intention papers and shows his desire to become an American citizen, desiring to fish in the public waters of this State, or fish for oysters, fish, shrimp, turtle, terrapin, clams, crabs or other marine animal life, for the purpose of selling them, shall procure from the Commissioner a license to do so, and such person shall pay the fee of one dollar for such license, which shall be for one year from the date thereof and obligate the holder to observe all the laws of the State enacted to conserve the marine life of such public waters. (Id., p. 200.)

Article 4033. *Registering Boat.*—Any person who is a citizen of the United States wishing to use a boat in catching or taking fish, green turtle, terrapin or shrimp, or gathering oysters or other marine life for market in public waters of this State, shall apply to the Commissioner for permission to do so. Such applicant shall furnish said officer under oath his name, place of residence, the name and kind of boat to be used by him, together with the number of men to be employed by him. Thereupon the officer shall register such boat, which register number shall be distinctly painted, as the Commissioner may designate, on such boat, for which registration he shall pay said officer one dollar and fifty cents, and said officer shall furnish the applicant with a certificate of such registration, valid for twelve months from date of issuance. (Id., p. 194.)

Article 4034. *License for Boat.*—Any captain or master of any boat wishing to engage in the business of catching or taking any fish, turtle, terrapin, shrimp or oysters or other marine life from the waters of the State for market shall, before engaging in such business, secure from the Commissioner a license for such business by making written application to the Commissioner. Such applicant shall set

forth under oath that he is a citizen of the United States and the name, class and register number of his boat. If the application be for a license to use seines and nets, the applicant shall state the number, class and length of the seines and nets to be used by him, and if the application be for a license to gather oysters, he must state the number of tongs to be used by him, and the applicant shall agree that all such products shall at all times be subject to inspection by the Commissioner and that said application shall authorize said Commissioner to enter at any time the boat or any house or place where he may have such products, and shall further agree to pay to the State a special tax provided for in Article 4030. Upon receipt of such duly executed application, accompanied by the applicant's registration certificate and one dollar, the Commissioner shall issue to the applicant a license to engage in the business set forth in his application, and the license shall be subject to such limitations and control as prescribed by the law. Said license must state the name of the licensee, name and class of his boat, and the date of issuance. Such license shall be for twelve months, if for fishing for fish, turtle, or shrimp; and from September first to April first following the date of license, if for gathering oysters; and from November first to February first, inclusive, if for the purpose of catching terrapin. The license so issued shall be kept on the boat subject to the inspection of the Commissioner, and it shall not be transferable without the consent of the Commissioner having been first had, which consent or assignment shall be written across the face of said license. If such licensed captain or master shall violate any fish and oyster law of this State, or shall refuse to comply with any provision made in his application for license, the Commissioner is authorized to cancel said license and the boat registration certificate, notice of which shall be given by the Commissioner in writing and delivered to the licensee, and such license to such captain and the registration of such boat shall not be renewed for three years. Any person wishing to engage in the taking or catching of any fish, turtle, terrapin, shrimp, oysters or other marine life, for market, as employe of the owner or as a part of the crew of any registered boat, shall procure from the Commissioner a license to do so; such person, to obtain such license,

Such person or corporation shall, by buoys or stakes or by fences, clearly and distinctly mark the boundaries of the private bed planted, or the boundaries of the deposit of oysters made for preparation for market; and no prosecution of anyone shall be permitted for taking such oysters unless the boundaries of such beds and deposits are established and maintained. (Id., p. 199.)

Article 4043. *Shipment of Oysters.*—It shall be unlawful for any transportation company operating within this State, its officers, agent or employes, to receive for shipment, or to ship, within the boundaries of this State from the first day of May to the first day of September of any year, any oysters from any public bed or reef for depositing or for marketing. Nothing in this chapter shall be construed as to prohibit any such transportation company, its officers, agents, or employes, from shipping or receiving for shipment, any oysters taken from a private bed located under the laws of this State, offered for shipment by the owner or owners, locator or locators of such bed; such fact to be established by the affidavit of the person or persons offering such oysters for shipment. (Id., p. 203.)

APPENDIX "B."

LICENSE AND FISH TAX LAWS OF VARIOUS STATES

Code of Alabama, 1923, Article 4084.

Article 4084. No person, firm, corporation or partnership shall take or market any such fresh salt water shrimp, or shall can, dry, ship, or transport, within the State, such fresh water shrimp, unless a tax of twelve cents per barrel be paid by the person, firm, corporation or partnership catching, canning, drying, shipping, transporting or purchasing the same for any purpose whatsoever, the said tax to be paid but once, the proceeds of such tax shall be forwarded to the State Treasurer and paid into the oyster fund.

Article 4085. The Commissioner of Conservation may establish ports of entry, which shall include Alabama Port, Cedar Point, Dauphin Island and Bayou la Batre, and such ports so established shall be the only ports used by persons or boats, landing shrimp in Alabama by water, or at which the tax is to be paid by those liable for same, and it is unlawful to so use any other port than those regularly established by the said Commissioner of Conservation.

Compiled Laws of Alaska, 1913, Section 259.

Section 259. That every person, company, or corporation carrying on the business of canning, curing, or preserving fish or manufacturing fish products within the territory known as Alaska, ceded to the United States by Russia by the treaty of March 30, 1867, or in any of the waters of Alaska over which the United States has jurisdiction, shall in lieu of all other license fees and taxes therefor and thereon, pay license taxes on their said business and output as follows: Canned salmon, four cents per case; packed salmon, ten cents per barrel; salt salmon, or bulk, five cents per hundred pounds; fish oil, ten cents per barrel; herring, twenty cents per ton. The payment and collection of such license taxes shall be under and in accordance with the provisions of the Act of March 3, 1899, entitled "An Act to define and punish crimes in the District of Alaska, and to provide a code of criminal procedure for the district," and amendments thereto.

Henning's General Laws of California, p. 838, Act No. 1691, approved April 14, 1911:

1. Every person engaged in the vocation of dealing in, buying and selling fish or shellfish or wild game or animals by wholesale in this state, must first obtain a license before engaging in such vocation.

Henning's General Laws of California, p. 849, Act No. 1691a, approved May 28, 1911:

1. Any person in this State who engages in the business of canning, curing, preserving or packing fish, which are taken in the ... waters of this State or are brought into this State in a fresh condition; or of manufacturing fish scrap, fish meal, fish oil, chicken feed or fertilizer from fish or fish offal; or of dealing in mollusks or crustaceans by wholesale, without first procuring a license for each plant or place of business, is guilty of a misdemeanor.

7. Every person operating under a license, as provided in Section 1 of this act, shall, in addition to the license fee, pay a privilege tax of two and one-half cents for each one hundred pounds, or fraction thereof, of fish purchased or received by them, or fish caught or taken by themselves, with their own equipment; provided, that any fish, excepting mollusks and crustaceans, so taken or received, which are utilized for human consumption in its fresh state shall not be subject to such tax; and provided further, that herring and roe shad shall also be exempt from the tax provided herein; and such person shall, in addition to make a monthly report as provided in Section 5 of this act, make a quarterly report to the Fish and Game Commission, showing the total amount of fresh fish in pounds, purchased, caught or received by them (for purposes other than human consumption in its fresh state) and of mollusks and crustaceans purchased or received by them from fishermen, or caught by themselves, whether they be used fresh or otherwise, during the three months next preceding March 31st, June 30th, September 30th and December 31st of each year. Blanks for this report shall be furnished by the Fish and Game Commission, and such report shall be rendered to the Fish and Game Commission not later than the 15th day of the month following the months of March, June, September

and December of each year. Such reports shall be accompanied by an affidavit by the person or firm purchasing, taking, catching or receiving such fish, to the effect that said report is a true and correct record of all fish caught or received by them (for purposes other than human consumption in its fresh state); and of all mollusks and crustaceans purchased or received from fishermen or caught by themselves, during the quarterly period covered by the report. Upon the failure of any person operating under a license, as provided in Section 1 of this act, to pay the privilege tax provided herein, said person shall forfeit his license for a period of one year; said privilege tax shall be paid to the Fish and Game Commission, or someone authorized by them, within thirty days after the close of each quarterly period.

Revised Civil Statutes of Florida, Articles 1259, 1260:

Article 1259. No person, persons, firm or corporation shall engage in the business of wholesale fish dealer until such person, persons, firm or corporation shall have first procured from the Commissioner of Agriculture of the State of Florida an annual fish dealer's license, for which a charge of ten dollars shall be made. All retail fish dealers shall pay a license tax of five dollars per annum. A wholesale fish dealer shall be considered anyone who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer shall be considered anyone who sells fish direct to the consumer; provided, however, that anyone holding a merchandise license may sell salt cured fish without payment of such retail dealer's license.

Article 1260. Any and all boats or vessels engaged in the fish industry in the salt waters of the State, before beginning operations must first procure a police license from the Commissioner of Agriculture, and for this purpose the owner, captain or agent of such vessel must present in writing to the said Commissioner of Agriculture an application setting forth the name and description of such vessel, name and post office of the owner, the number of nets carried by such boat and any such further data as said Commissioner of Agriculture shall deem necessary, on blanks to be fur-

nished by the Commissioner of Agriculture, and thereupon the Commissioner of Agriculture shall register such boat or vessel and shall issue necessary license on payment of cost thereof. A license shall be granted to the boat or vessel according to the following schedule:

Boats under 16 feet long and under 42 feet beam, $1.00.

Boats over 16 feet long and over 42 feet beam, 20 cents for each additional foot or fraction thereof of length of beam.

Provided, that any person paying the above license shall not be required to pay an additional license for fishing in any fresh water.

Revised General Statutes of Florida, 1920:

Article 1237. Each packer, canner, corporation, firm, commission man or dealer in shell fish shall keep a record on blanks or forms prescribed by said Commissioner of Agriculture, of all oysters, clams and shell fish purchased, used or handled by him or them, with the name of the parties from whom purchased, the quantity and the date, and shall keep an itemized account of all oysters, clams and shell fish caught by such packer, corporation, firm, dealer or other person, when caught and taken by boat controlled by them, and shall exhibit said account at all times when requested so to do by the shell fish commissioner, or any of his deputies, or agent, or person authorized by him in writing so to do, and shall on the first day of each month make a return under oath to the said Commissioner of Agriculture, as to the number of oysters, clams and shell fish purchased, caught or handled during the preceding month. The Commissioner of Agriculture shall be authorized to require detailed returns whenever he deems same necessary.

Article 1238. For the purpose of improving and enlarging the natural reefs and protecting both the natural reef and private bedding grounds, and to carry out the purpose of this article, as one of the conditions on which the State consents to the fishing, gathering or removal of oysters and clams from her natural reefs, and the use or rental of her water bottoms for oyster and clam propagating purposes, there shall be and is hereby levied a special assessment, forced contribution, or privilege tax of two cents per barrel on each

and every barrel of oysters or clams gathered from the waters of this State, whether from the natural or artificial oyster or clam reefs, bedding or propagating grounds, for sale or consumption; and on all oysters or clams that are opened before they have been measured in the shell, a privilege tax of one cent per gallon, or fraction thereof, shall be imposed. Oysters or clams taken from any natural reefs for bedding purposes shall not pay this privilege tax until again taken up for consumption or sale.

Article 1239. No person, persons, firm or corporation shall engage in the business of wholesale fish dealers until such person, persons, firm or corporation shall have first procured from the Commissioner of Agriculture of the State of Florida an annual fish dealer's license, for which a charge of ten dollars shall be made. All retail fish dealers shall pay a license tax of five dollars per annum. A wholesale fish dealer shall be considered anyone who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer shall be considered anyone who sells fish directly to the consumer, provided, however, that anyone holding a merchandise license may sell salt cured fish without payment of such retail dealer's license.

Park's Annotated Code of Georgia, 1952 Supplement, Section 92A (130), page 235.

Occupation Taxes. 992 (130). Upon each person, firm or corporation engaged in the business of packing or shipping oysters, shrimp or fish, $50.

Illinois Cahill's Revised Statutes of 1927, Chapter 56, Sections 27 and 28.

Section 27. It shall be unlawful for any person to conduct a wholesale fish market for the purpose of buying, selling or shipping fish, or as a wholesale dealer to buy, sell or ship any fish caught or taken from waters wholly or in part within the jurisdiction of the State or from waters over which the State has concurrent jurisdiction with any other State, without procuring a license to do so.

Section 28. Such licenses will be issued by the department upon

the receipt of written applications made out upon blanks furnished by the department, which shall be executed by the applicant and in which there shall be set forth the location of the place or places of business, and whether the application is made by an individual, a co-partnership or a corporation. If the application is made by a co-partnership, each member of the co-partnership shall sign the same. The fee for each of such licenses shall be twenty-five dollars. A license will be required for each separate wholesale fish market operated by an individual, a co-partnership, or a corporation. Every such license shall expire on the 15th day of April of each year.

(Sources: Marr's Ann. Statutes, 1915, Articles 3298, 3299, 3327, 3333, 3340)

Section 3340. Each packer, canner, commission man, dealer, firm or corporation, shall keep a record of all oysters purchased by him-self or themselves, with the names of the parties from whom purchased, the quantity and the date. They shall also keep an itemized account of all oysters fished by themselves and by all parties controlled by them and shall exhibit said account at all times to the Conservation Commission of Louisiana, or any of its authorized employes. On the first day of each month said packer, canner, commission man, dealer, firm or corporation, shall make a return under oath, to the said Commission as to the number of barrels purchased and caught during the preceding month, and a tax of two and one-half cents per barrel on each and every barrel of oysters canned, packed, purchased, caught or gathered from the leased oyster bottoms, and a tax of three cents per barrel on every barrel of oysters canned, packed, purchased, caught or gathered from the natural reefs either for sale or consumption, is hereby levied and shall be paid to and collected by, said Commission. Inspectors of said Commission are authorized to enter upon any boat or enter any building other than a domicile where oysters are carried or stored and to inspect such oysters at all times.

In all operations of the Commission, the standard measurement

of the barrel referred to herein shall be 3.73 cubic feet, which approximately represents the cubic contents of three bushels or one barrel.

Section 3208. It shall be unlawful for any resident firm or corporation to engage in the business of wholesale buying or shipping of fresh water fish other than game fish, unless he or they shall have first secured a license from the Conservation Commission on the following basis:

Dealers buying or shipping less than 50 barrels a month, $5.00.

More than 50 and less than 100 barrels per month, $15.

More than 100 and less than 150 barrels per month, $25.

More than 150 and less than 200 barrels per month, $30.

More than 200 and less than 250 barrels per month, $40.

More than 250 barrels per month, $50.

Section 3209. It shall be unlawful for any unnaturalized foreign born resident or for any non-resident firm or corporation, to engage in the business of wholesale buying or shipping of fresh water fish other than game fish, unless he or they shall have first secured a license from the Conservation Commission on the following basis:

Dealers or buyers shipping less than 50 barrels a month, $25.

More than 50 and less than 100 barrels a month, $40.

More than 100 and less than 150 barrels per month, $55.

More than 150 and less than 200 barrels per month, $70.

More than 200 and less than 250 barrels per month, $85.

More than 250 barrels, $150.

Each and every person holding or operating under a license issued by the Commission under the provisions of this section or of Section 24 of this act shall on or before the 5th day of each month furnish the Commission with a statement duly sworn to by the person to whom the license is issued, setting forth and showing in detail the number of fresh water fish, the several species or kinds thereof, and the weight in pounds of each species or kind of fresh water fish purchased and shipped by the party making the report or statement during the immediately preceding month. Any person failing to make the statement herein required within the time and

in the manner named shall be deemed guilty of a misdemeanor and upon conviction shall be punished under the provisions of this act.

Section 3227. No license shall be charged for seining for salt water fish with seines of less than 40 fathoms length, and for the operation of seines of greater length, a license of $10 shall be paid for seines of 40 fathoms or over and less than 200 fathoms; for seines from 200 fathoms to 300 fathoms in length shall pay a license of $15. All seines over 300 fathoms shall pay a license of $15 and in addition thereto $2.00 for each additional 20 fathoms or fraction thereof.

Section 3233. Any person, firm or corporation resident of this State engaged in the buying and selling of diamond back terrapin shall secure from the Conservation Commission a license, the charge for which shall be $25.

Any person, firm or corporation resident of this State engaged in buying, selling and shipping of diamond back terrapin shall secure from the Conservation Commission a license, the charge for which shall be $100; any person, firm or corporation not a resident of this State, or any unnaturalized foreign born resident of this State engaged in buying, selling or shipping diamond back terrapin shall secure from the Conservation Commission a license, the charge for which shall be $200.

Revised Statutes of Maine, 1916, Chapter 35, Section 13:

Section 13. The fees for inspection and branding, exclusive of cooperage, are for each barrel seven cents, and all such fees shall in the first instance be paid by the original owners of the fish, who may recover the amount thereof from the party buying or receiving the same, under the marks and brands aforesaid, and in addition to the price thereof.

Bagby's Ann. Code of Maryland, Article 39, Sections 127 and 128:

Section 127. Any person, firm or corporation desiring to engage in the business of taking or catching of fish for sale, by the use of pound nets, fykes, haul seines or other contrivances, except hook and line, within the waters of Chesapeake Bay, below Pool's Island and

within the jurisdictional limits of the State of Maryland, shall first obtain by application to the clerk of the Circuit Court for the county wherein he may reside, or the clerk of the Court of Common Pleas of Baltimore City, a license therefor, and such license shall have effect from the first day of February in the year in which it may be obtained to the first day of February, inclusive, next succeeding; and provided further, that such license shall not authorize the taking or catching of fish, except with hook and line, within the jurisdictional limits of any county or counties of this State.

Section 128. Each and every license to catch or take fish for sale under the provisions of Section 127 shall state the name, age and residence of the person to whom the same is granted, and every applicant for such license shall pay to the clerk of the Circuit Court for the county, or the clerk of the Court of Common Pleas of Baltimore City, which such license shall be granted, and before delivery of same, the sum of five dollars for the first license, and the sum of $1.00 for each and every additional net, haul seine or other contrivance to take or catch fish for sale in the waters of the Chesapeake Bay, and the sum of $2.00 for each license to take or catch fish for sale in the tributaries of the Chesapeake Bay, the clerk to receive the sum of twenty-five cents for each and every license so issued, as a fee for issuing the same, including the administering of the oath when required, and the same amount of license received for issuing same shall be paid over by the clerk into the Treasury of the State of Maryland, to be credited to the oyster fund; provided, that the provisions of this section shall not apply to net (include purse, fyke and hoop, buck or gill nets, not to hook and line; that nothing in this section shall apply north of a line drawn from Ricketts Point to Love Point.

General Laws of Massachusetts, 1921, Volume I, Chapter 94, Sections 86, 87 and 88.

Section 86. All fish when landed from a vessel or boat shall be weighed by a public weigher of fish or his deputy when so requested or demanded by the buyer or seller of such fish or by the master, agent or a majority of the crew of such vessel or boat; and such

weigher shall issue a certificate of weight to the seller and a duplicate to the buyer.

Section 87. Each deputy shall report to such weigher the weight of fish weighed by him, and the weigher shall keep a complete record of such weight with the date of weighing, the name of the vessel from which the fish were taken and the person for whom they were weighed.

Section 88. The fees for weighing fish shall be twenty cents per one thousand pounds, but in no case less than one dollar, and shall be paid by the person applying to have the fish weighed. Each deputy shall pay to the weigher two cents per one thousand pounds for all fish weighed by him.

Laws of North Carolina, Chapter 37, Article 4, Section 1893:

Section 1893. All dealers in and all persons who purchase, catch or take for canning, packing, shucking or shipping the sea products enumerated below shall be liable to a tax to be collected by the Fisheries Commission Board, as follows: On oysters, two cents a bushel, except seed oysters, three-fourth cent a bushel; escallops, ten cents a gallon; clams, ten cents a bushel; soft crabs, five cents a bushel; hard crabs, ten cents a bushel; crab meat, ten cents a gallon; shrimp, one-fourth of a cent a pound. But none of these products shall be twice taxed and no tax shall be imposed on oysters, escallops, or clams taken from private beds or gardens. Upon failure to pay said tax the license provided in the preceding section shall at once be null and void and no further license shall be granted during the current year; and it shall be the duty of the Commission, Assistant Commissioner or inspector to institute suit for the collection of said tax. Such suit shall be in the name of the State of North Carolina on relation of the Commissioner or inspector at whose instance such suit is instituted, and the recovery shall be for the benefit and for the use of the General Fisheries Commission fund. Any person failing or refusing to pay said tax shall be guilty of a misdemeanor.

Laws of South Carolina, Volume 3, 1922, Section 1005:

Section 1005. It shall be unlawful to catch, buy or ship shad, or the species of shad known as hickory shad, between the first day of April and the 31st day of December in any year within forty miles of the mouth of any river emptying into any gulf, bay or ocean, and above said limit to the source of any river between the 1st day of May and the 31st day of December in any year. An impost tax of five cents shall be put upon each shad and one cent upon each hickory shad offered for sale or shipped from any point within this State to other points within this State or without this State. Provided, shad caught in this State for personal use only shall be exempted from this tax. No nets shall be used under 5½-inch mesh for white shad and no net shall be used under 3½-inch mesh for hickory shad, and no net shall be stretched more than half way across any navigable stream nor within 200 yards of each other, and no nets of any kind shall be allowed below a line where Mosquito Creek empties into Winyah Bay across said bay in an easterly direction to the opposite shore of said bay, nor shall any device, net or seine for the stoppage or collection of fish be set or used in any manner whatever within one mile of the mouth of Waccamaw Creek, Pee Dee and Bull Creek rivers.

General Statutes of Connecticut, Chapter 119, Section 2262:

Section 2262. Inspectors shall receive for packing, heading, flagging, pickling and branding each barrel of fish, twenty cents, and for each half barrel ten cents.

General Laws of Oregon (Olson), Section 7540, Title XLII:

Section 7540. (a) Licenses herein required shall be issued to any qualified person or corporation by the Master Fish Warden, upon application therefor, and the payment of the license fees herein required; a separate license shall be required for each trap, pound net, set net, fish wheel or other fixed appliance, and for each seine and gill net, and dip net, and for each person trolling for salmon in the waters of Columbia River, and for each person other than employes engaged in the canning, packing or curing of food or shellfish, and

for each person other than employes purchasing or selling food or shellfish, either as principal, agent or broker.

(b) For each first class pound net or fish trap, license for taking salmon, $25; for each second class pound net or fish trap, license for taking salmon, $15; for each stationary fish wheel, license for taking salmon, $35; for each scow, fish wheel, license for the taking of salmon, $25; for each purse seine, license for the taking of salmon, $25; provided, that no purse seine shall be of greater length than 1750 lineal feet; for each gill net, license for the taking of salmon, smelt or herring, $7.50; for each license to troll for salmon for commercial purposes, $2.50; provided, that the word "troll" is hereby construed to mean not more than six lines to which shall be attached not more than a total of twelve hooks; and provided further, that for each additional twelve hooks, or lesser number thereof, an additional license shall be obtained.

For each set net, license for the taking of salmon, smelt or herring, $3.75; for each drag seine, license for the taking of salmon, smelt or herring, 3 cents per lineal foot, minimum license, $15; for each bag net, license for taking of smelt, herring or salmon, $1.00; for each license to take crabs, $1.00; for each license to take clams and mussels, $1.00; for each license to take crawfish, $1.00.

Retail fish dealers and peddlers, $5.00 minimum, and $1.00 per gross ton in the round or whole, for all salmon, shad or sturgeon handled in excess of five tons.

For each wholesale dealer in fish and for each person engaged in freezing, salting, smoking, kippering, preserving in ice or otherwise, $10; and $1.25 per ton on the gross weight of all salmon, shad and sturgeon, said weight being figured in the whole or round.

For each fish broker not operating as a packer or canner, a license of $50.

For each person using scows, boats or other water craft in the buying, handling or transporting of food fish, $1.00.

For each person, firm or corporation using scows, boats or other water craft in buying fish on the Columbia River, for each scow, boat or other craft, a license of $50. This requirement shall not apply to scows, boats or other craft used in buying fish for and

transporting fish to canneries and packing plants that pay an annual license fee to the States of Oregon or Washington, of not less than $100.

Every person, firm or corporation engaged in canning salmon, shell or other food fish, shall pay the following fish or licenses yearly:

For each case of Chinook salmon packed in District No. 1 prior to the 26th day of August of each year, 5 cents per case; for each case of Chinook salmon packed in District No. 1 after the 26th day of August of each year, and for each case of any other variety of salmon packed at any time in District No. 1, 4 cents per case.

For each case of clams, clam nectar, crab, shrimp and other food and shellfish, 1 cent per case; for each case of salmon packed on the Rogue River prior to the 26th day of August of each year, 5 cents per case.

For each case of salmon packed on the Rogue River after the 26th day of August of each year and for each case of salmon packed in any other part of District No. 2 at any time, 4 cents per case.

(c) All applications for licenses under the provisions of this act shall be made on blanks furnished by the Master Fish Warden, accompanied by a sworn affidavit specifying in detail the location of any fixed fishing appliances or seines and such information as will enable the Master Fish Warden to determine the correctness of the application.

In case of applications for retail dealers and peddlers, wholesale dealers, persons engaged in freezing, salting, smoking, kippering, preserving or otherwise dealing in food fish, persons engaged in canning salmon, shellfish or other food fish, said applicant shall set forth the amount of the various kinds of fish handled or canned by said applicant during the preceding license year, as shown by the books of the applicant, which shall be the basis for the charge for the current license year.

In case of application for retail dealers, or peddlers, or wholesale dealers, or persons engaged in freezing, salting, smoking, kippering, preserving or otherwise dealing in food fish, or persons engaged in canning salmon, shell or other food fish, who were not so engaged for the previous license year, then and in that event the Master Fish

Warden shall charge said applicants for retail dealer's or peddler's license the minimum fee of $5.00, and each applicant for wholesale dealer, or for freezing, salting, smoking, kippering, preserving or otherwise dealing in food fish the statutory fee of $10, and shall for the exact sum, said applicant shall execute a good and sufficient bond, guaranteeing the payment of further license fees based upon the actual amount of food fish handled during the current license year; and for each person engaged in the canning of salmon, shell or other food fish, the Master Fish Warden shall exact a good and sufficient bond, guaranteeing the payment of license fees on the basis of salmon, shell or other food fish canned during the current license year.

(d) Licenses shall be valid only for the rivers or waters within the district for which they are issued.

(e) Any license may be assigned or transferred to any person entitled to hold a license under the provisions of this act, and notice shall be given of such assignment or transfer within thirty days thereafter to the Master Fish Warden, who shall indorse the date of such notice on the license. If such notice be not given, the license shall be void. A fee of $1.00 must accompany each application for an assignment or transfer of said license.

(f) For the purposes of this act, a case of fish is defined to consist of 48 one-pound cans or bottles, or equivalent in weight.

(g) For the purposes of this act all traps taking fish of the value of $1000 or more, shall be considered of the first class, and all others of the second class.

(h) The State Board of Fish and Game Commissioners shall classify all fishing appliances and its classification shall be final.

Remington's Compiled Statutes of Washington, 1922, Section 5704, Title XXXV:

Section 5704. There shall be paid to the Treasurer of the State of Washington, for the salmon and other food fish and shellfish taken from its waters or from those over which it has jurisdiction, by the person, firm or corporation catching or taking the same, and for the salmon and other food fish taken in the waters of the Pacific Ocean off the western territorial limits of the State of Washington, by the

person bringing the same into the State of Washington, the sums herein mentioned, which shall be in addition to the licenses and other fees provided by this act:

For each Chinook salmon caught in the Columbia River district between the first day of January and the 26th day of August, both dates inclusive, 11 cents; for each Chinook salmon caught in the Columbia River district from the 27th day of August to the 31st day of December, both dates inclusive, 3½ cents, for each Chinook salmon caught in Grays Harbor or Willaps Harbor district, 4 cents; for each Chinook salmon caught in Puget Sound district, 7½ cents; for each dog or chum salmon caught, ½ of a cent; for each humpback salmon caught, ½ of a cent; for each silver salmon caught, 1½ cents; for each sockeye salmon caught, 2 cents, for each steelhead salmon caught, 4½ cents; for each 100 pounds or fraction thereof of razor clams, at the rate of 11 cents per 100 pounds; for all clams and mussels of all varieties other than razor, at the rate of 9 cents per 100 pounds; for all crabs, at the rate of 6½ cents per dozen; for all shrimp, at the rate of 5½ cents per 100 pounds, for all sea bass, at the rate of 26 cents per 100 pounds, for all carp, at the rate of 2½ cents per 100 pounds; for all black cod, at the rate of 22 cents per 100 pounds, for all ling-cod, at the rate of 13 cents per 100 pounds; for all rock cod, at the rate of 30 cents per 100 pounds; for all codfish, other than black, ling and rock, at the rate of 9 cents per 100 pounds; for all devilfish, at the rate of 26 cents per 100 pounds; for all dogfish, at the rate of 13 cents per 100 pounds; for all halibut, at the rate of 13 cents per 100 pounds; for all flounders, at the rate of 9 cents per 100 pounds; for all herring, at the rate of 4½ cents per 100 pounds; for all mackerel, at the rate of 22 cents per 100 pounds; for all salt water perch, at the rate of 26 cents for 100 pounds; for all red snapper, at the rate of 9 cents per 100 pounds; for all sable fish, at the rate of 26 cents per 100 pounds; for all smelt fish, at the rate of 39 cents per 100 pounds; for all food fish, other than those listed, and all fish which may hereafter be classified as food fish by the Board of Fisheries, at the rate of 10 cents per 100 pounds.

Payment of the foregoing tax for each and every fish taken or

caught shall be made by the person taking or catching the fish unless the fish are sold to some licensed canner, wholesale fish dealer, broker, or person engaged in freezing, salting, smoking, kippering, or otherwise preserving fish, or unless the fish be sold to some other person, firm or corporation who is required under the laws of the State of Washington to be licensed in order to purchase fish in said State, and who by the terms of this act is made liable to the State of Washington for the payment of the catch taxes by this act provided. Payment shall be made for the fish caught or taken during the preceding four months, on March 31st, July 31st and November 30th of each year.

In case such fish are sold, by the taker or catcher, to a canner, wholesale dealer, broker, or curer of fish, then and in that case the canner, wholesale dealer, broker, or curer of fish purchasing the same is hereby required to pay said catch tax to the State at the time of making the report of fish purchased during the four months' period preceding March 31st, July 31st, and November 30th of each year.

It shall be prima facie evidence that fish were caught within the waters of the State when disposed of within the State by a person operating an appliance licensed under the provisions of this act.

The purpose of this provision is to insure that any person taking any of the salmon or other food or shellfish from the waters of the State of Washington or those over which it has jurisdiction, or taking any salmon or other food fish from the waters of the Pacific Ocean off the western territorial limits of the State of Washington, shall pay to the State the catch tax by this act provided.